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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Second periodic reports of States parties due in 1988

Addendum

EL SALVADOR*

[26 August 1993]

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*/ For the initial report submitted by the Government of El Salvador, see CCPR/C/14/Add.5; for its consideration by the Committee, see CCPR/C/SR. 468, SR.469, SR.474 and SR.485 and the Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 40 (A/39/40), paragraphs 68-94. For the supplementary information submitted by El Salvador pursuant to the consideration of its initial report, see CCPR/C/14/Add.7; for the consideration of this report by the Committee, see CCPR/C/SR.716, SR.717 and SR.719 and the Official Records of the General Assembly, Forty-second Session, Supplement No. 40 (A/42/40), paragraphs 149-180.

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Introduction

1. The Government of El Salvador extends its warmest greetings to the Committee on Human Rights on this the occasion of its submission of its second and third reports on the effect given to the International Covenant on Civil and Political Rights, covering the period February 1986 - June 1992. In view of the unsettled political, economic and social situation prevailing in El Salvador during that period, the two reports have been combined into one.

2. The combined reports have as far as possible been prepared in accordance with the instructions contained in the guidelines relating to the form and content of periodic reports submitted by States parties. In addition, the report is deemed to reply to the comments and concerns expressed by the Committee and contained in document A/42/40.

3. As regards that part of the report relating to information of a general character to be submitted in accordance with the consolidated guidelines for the initial parts of reports which States parties are required to submit under various international instruments relating to human rights, and in particular the Covenant (HRI/CORE/1, annex), please refer to the basic document submitted by El Salvador (HRI/CORE/1/Add.34).

4. The information provided here complements that given in the initial report and in the addendum thereto, contained in document CCPR/C/41/Add.7.

5. As the Committee is aware, El Salvador has during the last ten years been experiencing the most serious crisis in its history, the effective and expeditious surmounting of which has demanded intense effort on the part of every group in the country and, in support of that effort, the solidarity and cooperation of the international community.

6. Against this background, in June 1989, immediately after taking office, the current President of the Republic, Alfredo Felix Cristiani Burkard, fixed as a priority objective the achievement of stable and lasting peace through the civilised process of dialogue.

7. One of the principal objectives of this process of dialogue, which was promoted by the United Nations, was the securing of a guarantee of the unrestricted enjoyment of human rights. That guarantee was formalized in the San José Pact, concluded in July 1990. That agreement established a basis for verification by a United Nations mission of compliance by the parties to it with the commitments it contained.

8. As a result of the progress made towards the achievement of peace in the country, the 1983 Constitution was revised. The changes made included amendments designed to improve the machinery for the safeguarding of human rights and the strengthening of the machinery of administration of justice.

9. Currently, and as a result of the implementation of the provisions of the peace agreements concluded in 1992 and of the development of the government's programme, steps are being taken to introduce major changes into the secondary legislation, and the democratic institutions are being strengthened, with a view to better reflecting the new situation, of which the faithful and real respect of human rights and fundamental freedoms constitutes the cornerstone.

10. As Committee members will be able to observe from this report, the machinery of justice in El Salvador has been gradually strengthened, with technical assistance from friendly countries, with a view to improving its efficiency and effectiveness, in the firm belief that these measures will have a decisive influence on the full application of the rule of law and, as a consequence, the full observance of human rights.

11. In the context of the efforts we are making to consolidate our democratic system and to strengthen ideological pluralism by broadening the field of political activity, it has proved possible to secure the entry of the Farabundo Martí National Liberation Front into the political spectrum and the emergence of new political institutions of various leanings. This is irrefutable evidence of the government's determination to establish a firm foundation for the establishment of a fairer, more human and more participative society.

12. The new situation in El Salvador has been recognized both within the country and abroad. It indicates that the government is directing priority attention to the fulfilment of the peace agreements. The Committee is therefore requested to show understanding with regard to the presentation of these reports in combined form. The government promises that future reports will be submitted in accordance with established procedures and time schedules.

Provisions of the covenant

Article 1

13. Throughout its history as an independent country El Salvador has been a staunch champion of strict compliance with the principle of self-determination of peoples. Thus, both in its relations with other States and within international organizations, it has condemned all foreign interference in the internal affairs of any country.

14. As regards the political situation which we have known in the Republic, we have struggled and will continue to struggle, with the help of the democratic nations of the world, to eliminate every form of foreign interference of the kind from which this country suffered when countries in Latin America and in other continents gave aid of various kinds to the armed opposition which was seeking to impede and destroy the developing democratic process, which, happily, is strengthening its foundations daily.

15. In this context El Salvador is playing an active role in the process of promoting peace and democracy in Central America which is being conducted in pursuance of the Esquipelas II text, signed in August 1987. The principle of respect of the right of self-determination of peoples is one of the basic elements and an integral part of that text, which has led to the creation of a system of integration within Central America within which the States in the sub-region have expressed the intent to combine their efforts to bring about the full development of the peoples of the area.

16. In the exercise of its sovereignty, Salvadorian society has set up a legal structure, following the models and procedures permissible in a State governed by the rule of law. The people of El Salvador elect their rulers freely; the latter, invested with legitimate authority conferred on them by the people, exercise sovereign power and, in their representative capacities, manage programmes and projects designed to secure the economic, social and cultural

development of the country with the assistance and responsible participation of all its citizens.

17. Within the United Nations El Salvador has shown its sincere and keen attachment to this principle, consistently supporting the resolutions of the General Assembly and the resolutions and decisions of the Security Council condemning, and providing for measures to combat, interference, invasions by foreign countries, occupation and colonialism and demanding respect of the right of peoples to elect their own governments and to sovereignty. In the same spirit El Salvador has given its utmost support to the Secretary-General in his endeavours to settle these problems and to the use of peaceful means for the settlement of international disputes.

18. El Salvador has disposed freely of its natural wealth and resources ever since achieving independence.

19. The economic order in the country is based essentially on principles of social justice seeking to ensure that all the inhabitants of the country enjoy a level of living compatible with human dignity.

20. The economic and social policies being pursued by the current Presidential regime (1989-94) are based on the following principles:

(i) man is an end in himself, and not a means of directing the functioning of society (the State has a duty to place itself at the service of man, never the reverse);

(ii) the State acts in a subsidiary capacity; the productive sector acts according to principles of solidarity;

(iii) the ultimate aim of society is the common welfare - not that of a majority; still less that of a minority; but that of each and every citizen.

21. In the view of the present administration, the social market economy offers the best means of unleashing the creative talents of the individual (more resources = the progress of society as a whole).

22. The general objective of the government of President Cristiani is one of national recovery. Consequently the objectives of the economic Plan are to bring the country out of the economic crisis and initiate a process of comprehensive and sustained development over time; while those of the social Plan are to improve the quality of life of the citizens of El Salvador and to initiate the process of eradication of poverty. The document entitled "Results of the Economic and Social Development Plan Achieved after Four Years of Government" is available for consultation in the archives of the Centre for Human Rights. This document describes the state of the economy in 1989; the basic objectives of the Economic and Social Development Plan, 1989-94; the economic strategy and the principal reforms undertaken in the fields of commercial, fiscal, monetary and financial policies and legislation; the measures taken affecting the production sector; and other results achieved.

Article 2

23. The Government of El Salvador considers that respect for civil and political rights and the full application thereof constitute the foundation on

which democratic societies stand and develop; for these rights are par excellence consubstantial with and inalienable from the individual and are ultimately an essential prerequisite for the exercise of the other rights. Consequently it upholds as a national tenet the concept that "the State is not an end in itself but a means of improving and exalting the individual, who is the basic unit of any people."

24. Article 1 of the national constitution recognizes the individual as the origin and purpose of the State and declares, on the basis of that principle, that the State is organized for the attainment of justice, judicial certainty and the common good.

25. In national legislation civil and political rights are defined in articles 2-28 of the Constitution. Every person present in the territory of El Salvador, and therefore subject to Salvadorian law, is entitled to enjoy and exercise these rights, and no restriction may be placed on the enjoyment thereof on grounds of differences of nationality, race, sex or religion.

26. Article 3 of the Constitution, which stipulates that all persons are equal before the law and prohibits all restrictions based on the factors just mentioned, makes no reference to the other differences mentioned in the first paragraph of article 2 of the Covenant. In practice, however, over the years it has become generally accepted that the enjoyment of civil rights may not be restricted on account of political opinions or attitudes adopted on economic or other questions, since these rights form an integral part of human nature and a basis of natural law, and thus constitute the origins of universal positive law.

27. Political rights are defined in chapter II of the Constitution, which is entitled "Citizens, their political rights and duties and the electorate".

Article 2, paragraphs 3(a), (b) and (c)

28. Both the Constitution and its secondary legislation (Codes, Acts and other statutory instruments) incorporate the rights guaranteed in the Covenant. In this connection it should be mentioned that in El Salvador individuals have a variety of possible remedies before the competent authorities if they consider that their civil or political rights have been violated by the judicial system.

29. Article 11 of the Constitution is the fundamental text governing all legal proceedings. It is fully developed in secondary and supplementary legislation covering violations of substantive legislation, i.e., the Code of Penal Procedure, the Code of Civil Procedure, the Constitutional Procedure Act, the Act concerning Administrative Disputes, etc.

30. Article 11 states that "No person may be deprived of the right to life, liberty, property, possessions or any other of his rights without first being tried and convicted in accordance with the law; nor may he be tried twice for the same offence." This article lays down two principles encountered in the field of legal process everywhere - the principle of petition and the principle of reply. These principles are given the status of constitutional law in article 18 and in the fifth paragraph of article 6 respectively.

The right to bring actions and enter pleas in El Salvador

31. The right to institute legal proceedings, the right of defence and the right to enter pleas (which forms part of the latter) have a constitutional

basis in El Salvador. Although the legislature which drew up the Constitution did not use the technical terminology relating to legal proceedings by which these rights are identified in the relevant legislation, paragraph 5 of article 2 of the Constitution, which begins with a list of the fundamental substantive rights, stipulates that every individual also has the right to protection in the preservation and defence of his rights. In the same spirit, article 18 provides that "any person is entitled to petition the lawfully established authorities in writing and in a seemly fashion; to have such petition acted upon; and to be informed of the result" (right of reply).

32. Paragraph 5 of article 6 of the Constitution recognizes the right of reply as a means of protecting the fundamental rights and guarantees of the individual.

33. All the foregoing demonstrates that the right to institute legal proceedings, i.e., the right to turn to the courts to seek the protection of a right (the right to bring suit), has a well-established place among the rights of the individual recognized in the Constitution.

34. As is the case with legislation of the same kind in other countries, the secondary legislation governing the different forms of legal process regulates the methods of instituting legal proceedings.

35. The guarantee of a court hearing, which gives concrete expression to the right of defence, reflects the principle of the bilateral nature of the proceedings and that of equality of the parties thereto. These principles, together with that of due process, are strengthened by other constitutional provisions such as article 15, which provides that "No person may be judged except in accordance with legislation promulgated prior to the act under examination and by courts previously established by law".

36. The guarantees of a court hearing and of defence are developed in the secondary legislation governing legal process through a system of notifications. The sanction of nullity of proceedings is applicable in the event of failure to issue a summons to appear to the defendant or to notify the parties concerned on taking steps which affect the course of the proceedings through the various levels; thus the reversal of the decisions of judges in the lower courts is possible, in particular on account of violations of the essential procedures of judgement or due process, including, where appropriate, the enforcement of constitutional rights (amparo).

37. The legislation governing legal proceedings facilitates the exercise of the right to enter pleas - a right specific to the defence, allowing the latter to invoke concrete facts to counter the claims of the plaintiff - in the forms recognized by procedural doctrine, namely - (a) procedural or formal pleas (known as dilatory pleas), which may relate to presumptions of a procedural nature or records of the proceedings; or (b) pleas of a substantive nature (known as conclusive pleas) refuting the claims of the plaintiff.

38. In this connection the Code of Civil Procedure, in addition to the above classification, which follows conventional, civil-law-based practice, comprises a further categorization of pleas: real pleas, relating to the object or right in question; and personal pleas, relating to the party which advances them.

39. Both this code and the legislation governing special forms of legal proceeding specify the manner in which the defendant has the right to enter pleas and the time-limits thereon.

40. As regards the last part of paragraph (b) of article 3 of the Covenant, the Constitution provides for the establishment of administrative disputes courts to hear complaints against public officials in respect of measures taken in the performance of their duties where it is alleged that a right has been contravened or violated.

Types of remedy

41. Under national legislation any person who considers that one of his constitutional rights has been violated has three basic remedies: habeas corpus; enforcement of constitutional rights (amparo); and action of unconstitutionality. All three are regulated by the Constitutional Procedure Act. There is also a right of administrative recourse, enshrined in the Constitution and regulated by the Administrative Jurisdiction Remedies Act; the competent body is the Administrative Disputes Section of the Supreme Court of Justice.

The right of habeas corpus or personal appearance

42. Paragraph 2 of Article 12 of the Constitution provides that "any person has the right of habeas corpus wherever an authority or an individual unlawfully restricts his freedom".

43. Article 4 of the Constitutional Procedure Act states that:

> "Where the violation of this right takes the form of an unlawful restriction of individual freedom by any authority or individual, the victim shall have the right to apply to the Constitutional Section of the Supreme Court of Justice or to courts of second instance outside the capital for habeas corpus."

44. Article 40 of the same Act provides that:

> "In any case of arrest, confinement, detention or restriction not authorized by law or carried out in a way or to a degree not authorized by law, the victim shall have the right to be protected by a writ requiring his personal appearance."

45. With regard to this remedy the Ministry of Justice is currently studying new regulations, since the constitutional safeguards of freedom as defined in paragraph 2 of article 11 and paragraph 2 of article 247 of the Constitution have proved ineffective in practice notwithstanding the fact that they form part of a long-standing tradition in El Salvador. One of the weaknesses lies in the current secondary legislation. The draft of the reforming regulations define better the elements giving rise to proceedings and the competence of the courts hearing them; in particular, it replaces the existing procedure conducted in writing, which does not guarantee that the person concerned will be presented or will appear before a judicial authority, by an oral procedure, which will by definition be much shorter and more expeditious.

46. It is thus considered that the reforms will significantly improve this remedy and make it the primary safeguard of the person of every individual.

The remedy of amparo (enforcement of constitutional rights)

47. Article 182 of the Constitution provides that "the duties of the Supreme Court of Justice are : 1. to hear amparo proceedings ..." This remedy is therefore available when any of the rights guaranteed in our Constitution are violated. The principle is developed in article 12 of the Constitutional Procedure Act, which states:

> "Any person may apply to the Constitutional Section of the Supreme Court of Justice for amparo in the event of the violation of the rights granted to him by the Constitution."

48. Application for amparo may be made in the event of any act or omission by any authority or official of the State or of its decentralized bodies which violates those rights or impedes their enjoyment.

49. Application for amparo may be made only when the act complained of cannot be remedied by other recourse procedures.

50. If the amparo sought is based on unlawful detention or restriction of personal liberty, the provisions of chapter IV of the Constitutional Procedure Act are applicable; in other words, the matter is treated as one of habeas corpus.

The remedy of unconstitutionality

51. The action of unconstitutionality is provided for under article 183 of the Constitution, which provides that the only court competent to declare the unconstitutionality of laws, decrees and regulations, in form and in content, generally and with binding effect, is the Supreme Court of Justice. It acts in response to a petition lodged by any citizen (concept of nationality).

Administrative jurisdiction remedies in El Salvador

52. The term "administrative jurisdiction remedies" relates to the power to hear and settle disputes arising over the legality of acts committed by the public administration. In El Salvador remedies of this type have a constitutional basis originally enshrined in the 1950 Constitution. Today the constitutional basis for this remedy is found in article 172 of the current Constitution, which gives the judicial authority sole power to hear, among other things, cases of administrative jurisdiction remedies and to enforce its judgements.

53. The creation of a judicial forum to hear administrative disputes dates back to 1978. On 14 November of that year the Legislative Assembly adopted the Administrative Jurisdiction Remedies Act. This addition to the legal system in El Salvador constituted a major advance inasmuch as it provided an effective legal instrument guaranteeing every person the safeguarding of his individual rights and legitimate interests vis-à-vis the public administration and, in the last resort, an important tool for ensuring the legality and certainty of justice.

54. The establishment of this machinery filled a gap in our legal system, since the Act guarantees the rights of the public administration as well as those of the individuals subject to it.

55. In relation to the constitutional standards applicable, the Act conceives and structures the system of administrative jurisdiction remedies as falling within the powers of the Supreme Court of Justice and, within the organization of the latter, as the responsibility of the Administrative Disputes Section. Thus the system of administrative justice comprises only one level of jurisdiction.

56. Basically this Act is a statutory instrument containing provisions which are simple and easy to apply and are based on the guiding principles of administrative law and provisions on the subject found in the laws and codes of other countries.

57. Experience over the years has confirmed that this Act plays a primary role in ensuring the legality of administrative acts.

58. The statistical tables concerning recourse to constitutional remedies, habeas corpus, amparo, actions of unconstitutionality and administrative disputes, the numbers of actions brought and the decisions or rulings handed down during the period covered by this report may be consulted in the archives of the Centre for Human Rights.

The generally binding character of judgements declaring unconstitutionality: might exceptions occur ?

59. Judgements declaring a law, decree, regulation or other act having force of law unconstitutional have erga omnes effect - in other words, they are universally binding without any exception. Thus basically the substantive effects of these judgements are equivalent to those of the acts to which they relate, since they imply in a sense a form of derogation from the law.

60. In this connection article 10 of the Constitutional Procedure Act stipulates that:

> "There may be no appeal against a final judgement, which shall be generally binding on the organs of the State, on its officials and authorities, and on all natural and legal persons. If the judgement declares that the law, decree or regulation in question is not, as alleged, unconstitutional, no judge or official may refuse to comply with it invoking the powers granted by articles 185 and 235 of the Constitution."

61. Thus in El Salvador the machinery of judgement of unconstitutionality of the acts referred to earlier offers direct control of their constitutionality; that control is exercised by the constitutional chamber, whose decisions have the effects described above, to which no exceptions are permitted.

The power of a judge to declare unconstitutional a law invoked in the case before him (where no judgement of unconstitutionality has been pronounced)

62. In addition to the direct control of the constitutionality of acts by the State which is exercised by the Constitutional Section of the Supreme Court of Justice, there is what is known as an "extended" system of control of constitutionality, established under a provision of the Constitution, exercised by judges when applying legislation in the course of a judgement. In this connection article 185 of the Constitution provides that:

"The courts may, as part of their powers to administer justice, declare, in cases where they have to render judgements, that a law or other provision enacted by another organ of State is inapplicable on the grounds that it is incompatible with constitutional principles."

63. This is a power conferred on judges whenever they have to render judgement. It implies that they have power, by virtue of their office, to examine the constitutionality of laws and other provisions enacted by the other organs of State when they are required to render judgements on the basis of those laws or provisions. However, if the law or provision in question has been declared constitutional by the competent section, the ordinary courts cannot undertake such an examination except where the constitutional grounds are different from those submitted to the Constitutional Section in the case heard by it.

64. This control of constitutionality is compatible with the principle that the Constitution takes precedence over all other legislation.

Ordinary and special appeals procedures in El Salvador: cassation

65. The right to challenge a judgement of a court of law is recognized in Salvadorian legislation on legal proceedings. It is exercised through ordinary and special appeals procedures of kinds generally accepted in the legal systems of countries with advanced legal cultures.

66. Among the remedies admitted and regulated by Salvadorian legislation particular mention should be made of the right of appeal. This is available, not only to the parties in the proceedings, but also to any person who has an interest in the case and who is advantaged or prejudiced by the judgement, even if he took no part in the proceedings. The appeal is heard by the court at the next level above that of the court which rendered the judgement impugned. There is no recourse against the decision of the court which hears the appeal, as the ordinary right of petition has been abolished. This means that there are only two stages in legal proceedings in El Salvador. This is considered preferable to the three-stage system in force earlier. The new system was designed to ensure that the machinery of civil justice functions with dispatch as well as certainty, since recourse to the courts of second instance of itself prolongs the settlement of private-law disputes between individuals.

67. There are other admissible remedies which, although of lesser importance than that already mentioned, nonetheless contribute to the effectiveness of the right of defence. These are: the rights of revocation and mutation against rulings of a purely procedural nature or dealing with specific points or incidents; and the rights of explanation and review of secondary matters, which are available against final judgements. These rights do not involve changes of instance; they are dealt with by the court which pronounced the impugned ruling.

68. Salvadorian legislation on legal procedures also grants the parties special remedies, which as such are matters of strict law; moreover, the law also specifies the types of rulings against which they are available. As with ordinary appeals, the grounds on which the special remedies may be invoked are stipulated specifically and in a strictly defined fashion. This group of remedies used to include the right to petition for nullity of a judgement; but the legislation establishing and regulating that right has been repealed and replaced by the special remedy of cassation, introduced by an Act dated 31 August 1953.

69. Other special remedies regulated by law are the right of complaint in respect of an unlawful act or delay in the dispensation of justice, which is addressed to the court which would hear an appeal in the case in which the unlawful act or delay occurred, even if no appeal is actually made; and the right of recusal, which enables litigants to petition that officials of the judiciary whom they suspect of unjust or unlawful conduct be debarred from acquiring knowledge of or taking part in the legal proceedings.

70. To strengthen still further the guarantees of the legal security of the individual, the Constitution lays down the principle that no judge may serve at more than one level of instance in the same case.

71. Before the adoption of the 1950 Constitution, Salvadorian procedural legislation provided for the special remedy of nullity. However, that Constitution empowered the Supreme Court of Justice to hear cases of amparo and appeals in cassation; these remedies superseded the earlier one. In implementation of that constitutional principle, the Cassation Act was adopted. However, this function does not have a constitutional basis.

72. The Act stipulates that appeals in cassation under civil, commercial and labour law shall be heard by the Civil Section of the Supreme Court of Justice and cases under criminal law by the Criminal Section. Appeals in cassation may be made against final judgements; interlocutory judgements pronounced in cases of voluntary jurisdiction terminating the proceedings and rendering their continuation impossible; and awards of arbitrators.

73. Appeals may be made on grounds, both substantive and formal, specified in an exclusive fashion in the Act. The substantive grounds consist of breaches of the law or of legal doctrine; the formal grounds consist of failure to complete an essential step in the proceedings. An appeal against an arbitration award is receivable only if it relates to awards made out of the agreed time or covering points not submitted to the arbitrator for decision.

74. The court of cassation , when quashing or annulling an impugned judgement, must give the information called for by law. In such cases it is acting as a court of instance, since referral back is not permitted except in cases of an irregularity of form.

Structure of the machinery of legal process at the different levels

75. There are two levels of instance in civil-law proceedings in El Salvador. At the lower level, the courts consist of a single judge. Cases involving small amounts (currently 2,000 colones or less) are heard by a magistrate (juez de paz); the proceedings are conducted orally. Where the sum involved exceeds that amount or is not known, the proceedings are conducted in writing and conducted by judges with competence either in civil matters only or in other fields as well; all of them enjoy higher rank than a magistrate. The judges with competence in more than one field bear the title of "judges of first instance" - which is not to say that judges with competence in civil matters only do not have that status.

76. In this two-level system (which has obtained in El Salvador since the abolition of the system of ordinary appeal by petition, which constituted a third stage) the single-judge courts which normally act as courts of first instance sometimes, in cases specified by law, act as courts of second instance; conversely, courts established to hear cases in second instance, which consist

of several judges, act in certain cases as courts of first instance. Thus in the system of legal proceeding in El Salvador single-judge courts which ordinarily act as courts of first instance act in exceptional cases as courts of second instance and vice versa. In cases of the latter kind the Civil Section of the Supreme Court of Justice, which ranks as a court of cassation, acts as the court of second instance (appeal). If the remedy of cassation is sought against its decision, the appeal is heard by the full Court - which normally does not perform jurisdictional functions.

Article 3

Methods of giving effect to the provisions of the international covenant on civil and political rights before the judicial authorities

77. Article 3 of the Covenant imposes on signatory States an obligation to guarantee the rights and freedoms stipulated in the Covenant and, among other things, an obligation to ensure - (a) an effective remedy; (b) the establishment of a jurisdictional authority; and (c) the enforcement of decisions on remedies.

78. In this respect the political rights laid down in the Covenant, which are similar to those contained in the Constitution of El Salvador, are fully covered in this country in that they are safeguarded by the procedures laid down in the Constitutional Procedure Act. Thus the right of personal freedom is safeguarded by the procedure of habeas corpus; the other constitutional rights, and, indeed, all other rights, are safeguarded by the guarantee of a court hearing and of due process, backed up by the amparo procedure.

79. The rights recognized in the Covenant and the Constitution include the right to life (article 6 of the Covenant and articles 2 and 11 of the Constitution; under the latter the death penalty is applicable only in exceptional cases); the prohibition of torture and of cruel or inhuman punishment (articles 7 and 10 of the Covenant and article 12, paragraph 2, of the Constitution); the prohibition of slavery (article 8 of the Covenant and article 4 of the Constitution); the prohibition of imprisonment for debt; the affirmation of equality before the law and all authorities; the presumption of innocence in criminal proceedings; the requirement of special detention arrangements for convicted juveniles; freedom of thought, conscience and religion; the right of association; and the fundamental rights of the family and the minor.

80. Consequently, and without prejudice to the content of the secondary legislation amplifying those rights, there are, as was indicated earlier, constitutional rights of recourse to the Constitutional Section of the Supreme Court of Justice which safeguards those rights against possible violations.

Article 4

Emergency situations

81. The legislation governing emergency situations is contained in section 2 of chapter I of the Constitution of the Republic, entitled "Individual rights in a state of emergency", which is to be considered in the context of Title II ("The fundamental rights and guarantees of the individual").

Grounds for suspension

82. In accordance with article 29 of the Constitution, certain constitutional guarantees are suspended in the event of war, rebellion, sedition, catastrophe, epidemic or other general disaster, or serious disturbances of public order. Suspension must be effected by decree of the Legislative Assembly or the Executive, according to the case.

Procedure for proclamation of a state of emergency

83. The body with primary competence is the Legislative Assembly, which consists of 84 members. It may by decree suspend certain individual rights for a period not exceeding 30 days. The suspension may apply to all or part of the territory of the Republic. A decree suspending certain rights must, in accordance with article 131 (27) of the Constitution, be adopted by at least two thirds of the elected members.

84. Once the period of suspension (which, as mentioned earlier, may not exceed 30 days) has elapsed, the state of emergency may be prolonged for a like period by a new decree if the circumstances which warranted it continue. If no new decree is issued, the suspended guarantees are re-established automatically.

85. In addition, the Executive, acting through the Council of Ministers, has powers under article 167 (6) of the Constitution to suspend constitutional guarantees, but to a limited extent only, i.e., provided that the Legislative Assembly is not in session; in such cases the executive must immediately report to the officers of the Legislative Assembly on the circumstances which gave rise to the adoption of the measure and the steps it has taken in connection therewith.

86. Once the circumstances which gave rise to the suspension of constitutional guarantees no longer exist, the Legislative Assembly or the Council of Ministers, as the case may be, must restore these guarantees. The decision is applicable to the remaining part of the period of emergency, since once the latter has expired there is no need for a new decree to restore them; as indicated earlier, the rights suspended come into force again ipso jure.

Individual constitutional rights which may be suspended

(1) freedom to enter, reside in and leave the country (article 5 of the Constitution);

(2) freedom of choice of domicile and residence (article 5);

(3) freedom of expression (article 6, paragraph 1);

(4) freedom of association and assembly (article 7, paragraph 1);

(5) inviolability of correspondence (article 24);

(6) prohibition of administrative detention exceeding 72 hours in duration (article 13, paragraph 2);

(7) the right of a detainee to be informed immediately and in an understandable fashion of his rights, the reasons for his detention,

the right to remain silent and the right to be assisted by defence counsel (article 12, paragraph 2).

Suspension of the rights mentioned in (1) - (5) above requires a favourable vote by two-thirds of the deputies; suspension of those mentioned in (6) and (7) must be voted by three-quarters of the deputies.

87. Suspension of the right of association and assembly does not apply to associations and assemblies for religious, cultural, economic or sports purposes. Freedom of trade union assembly, too, is not suspended.

88. It is important to bear in mind that decrees of suspension do not necessarily apply to all the constitutional rights subject to suspension. The choice of the rights to be suspended is made by the legislature or the Executive, according to the case, on the basis of the nature of the grounds invoked for suspension.

89. Between 23 April 1985 and 12 January 1987, as a result of the existence of serious disturbances of public order provoked by the enemies of democracy in El Salvador, guarantees remained suspended under legislative decrees enacted every 30 days (as explained earlier). The grounds given for each decree were precisely the existence of these disturbances, which threatened the security of the State and the physical and moral integrity of the population, and the need to protect property.

90. The first decree enacted during this period was Decree No. 360, dated 23 April 1985. It suspended the rights guaranteed under articles 5, 12 (para. 2), 13 (para. 2) and 24 of the Constitution, relating respectively to freedom to enter, reside in and leave the country; the right of a detained person to be informed of his rights, the grounds for his detention and the right to the assistance of defence counsel; the restriction of the duration of administrative detention to 72 hours (a maximum which can be exceeded during states of emergency); and the inviolability of correspondence.

91. The next decree, dated 23 May 1985, prolonged the state of emergency on the grounds that the circumstances which originally gave rise to the adoption of the measure still existed, added to the earlier suspensions that of freedom of expression (article 6 of the Constitution). This right remained suspended (except during election periods), together with the other rights, until 12 January 1987, on which the decree of suspension No. 541, dated 11 December 1986, expired. Since no new decree prolonging the state of emergency was adopted, the suspended guarantees were revived.

92. During the period of suspension of freedom of expression, the authorities, bearing in mind the developing democratic process, applied the measure with the utmost moderation and tolerance, notwithstanding the legal powers available to them under the state of emergency.

93. These rights have not been suspended at any other time since the new Constitution came into force in December 1983.

94. No state of emergency has been declared since January 1987. However, on 11 March 1987 a legislative decree (No. 618), entitled "Act concerning the penal procedures applicable in connection with the suspension of constitutional rights", was enacted. It governs the procedures applicable if an emergency

situation should arise in the future (and also the manner of dealing with certain types of crime, as explained below).

95. The constitutional basis of this text is to be found in article 30 of the Constitution (before amendment), which provided that, when constitutional rights were suspended, crimes against the existence and the organization of the State, against the international and internal integrity of the same, and against the public peace, as well as crimes of an international order, would fall within the jurisdiction of military tribunals.

96. This supplementary Act, although carrying full legal force, was never applied in practice, as it can only be applied during a state of emergency, and none has existed since the date of its promulgation.

97. This Act has been repealed, since during the constitutional reform article 30 was amended to cancel the competence of the special military tribunals during states of emergency; as a result, the supplementary Act had to be repealed. Since the repeal the situation has been that if a state of emergency were to be declared all criminal proceedings, regardless of the nature of the crime committed, would be conducted under ordinary legislation. The repealed Act had been adopted in 1989 as a consequence of the guerilla offensive launched in November of that year.

98. To conclude, the regime applicable in times of emergency is fully in accordance with the provisions of article 4 of the Covenant and of article 72 (1) of the American Convention on Human Rights. It is fully in line with the concepts enshrined therein and respects those rights which may not be suspended.

Article 6

99. The Constitution of the Republic recognizes the right to life as a fundamental right. No one may be arbitrarily deprived of his life.

100. As was seen in the section relating to the legislation ensuring respect for and safeguarding the rights recognized in the Covenant (article 2.1 of the Covenant), article 11 of the Constitution of the Republic provides that:

> "No person may be deprived of the right to life, liberty, property, possessions or any other of his rights without first being tried and convicted in accordance with the law; nor may he be tried twice for the same offence",

while article 15 states that:

> "No one may be tried except in accordance with laws enacted prior to the commission of the act in question and by a court previously established by law."

101. Thus respect of the principles of legality, court hearing, defence, due process and non-retroactivity in legal proceedings ensures that an individual may not be arbitrarily deprived of life or of any other right.

Article 6, paragraph 2

102. With regard to the death penalty in El Salvador, please refer to the information given in the previous report CCPR/C/14/Add.7), since no change has taken place in the position.

103. The information which follows relates to the provisions on commutation generally (including, logically, commutation of death sentences) and other procedures to seek clemency.

104. Under article 35 (3) of the internal rules of the Executive, competence to hear applications for commutation lies with the Ministry of Justice. Thus that ministry is the channel though which article 168 (10) of the Constitution, which confers on the President of the Republic the power and the duty to "commute sentences, following a report and a favourable decision by the Supreme Court of Justice", is implemented.

105. There are three legal forms of clemency - amnesty, remission and commutation. For cases of amnesty and remission the Legislative Assembly is competent; powers of commutation lie with the President of the Republic.

106. In line with world-wide practice, commutation in El Salvador consists of the replacement or modification of the principal penalty imposed under an enforceable judgement by the imposition of a lesser one; however, commutation does not extinguish civil liability or the effects of repetition of the offence.

107. Powers of commutation lie with the Executive following a report and a favourable decision by the Supreme Court of Justice. Two possible situations exist:

(1) if the decision is favourable, the judicial branch of the Executive may grant or refuse the commutation;

(2) if the decision of the Supreme Court of Justice is unfavourable, the President of the Republic may not show clemency.

108. Commutation does not entail cancellation of the penalty. However, the legislature has sought to include provision on this subject in Title 6, since after commutation the sentence is deemed to have been completed (Penal Code, article 120 (2) when the condemned person has completed the number of years of imprisonment fixed in lieu of the number imposed in the original sentence.

Machinery for commutation

Constitution

109. Article 168 of the Constitution provides that the powers and duties of the President of the Republic include the commutation of sentences, following a report and a favourable decision by the Supreme Court of Justice.

Internal rules of the Executive

110. Under article 35(3) competence to receive applications for commutation of sentences lies with the Ministry of Justice.

Penal Code

111. Article 120(2) of the Penal code states that a sentence is extinguished by its completion.

112. Article 129 provides that the principal penalty imposed by an enforceable judgement may be replaced by a lesser one through commutation. The latter does not extinguish civil liability or the effects of a repetition of the offence; but it does affect the length of any accessory penalties which may have been imposed during the period of the sentence.

Code of Penal Procedure

Commutation

Legal basis

113. Article 675 provides that the principal penalty imposed by an enforceable judgement may be replaced by a lesser one through commutation. The latter, powers of which lie with the Executive, may be granted to persons sentenced by enforceable judgement for any type of crime.

Who can apply ?

114. Article 676 provides that any condemned person may apply for commutation, as may any citizen on his behalf without any need for authorization establishing his status. The court pronouncing the sentence may make a recommendation for commutation in accordance with the provisions of the Code.

Applications

115. Article 677 provides that applications for commutation may be addressed to the Ministry of Justice. They must state the reasons or grounds justifying clemency, and certificates of the enforceable judgements pronounced in the case must be appended. In cases involving the death penalty, presentation of the certificate is not obligatory; in such cases the ministry will automatically initiate an application where appropriate; this must be done immediately and on ordinary paper.

Reserved report

116. Article 678 provides that, once the application has been declared receivable, the ministry shall request the head of the penitentiary establishment to provide the report required under article 672 within the time-limit stipulated in that article.

Other reports

117. Article 679 provides that, on receipt of the report mentioned in the previous article, the ministry may ask the government and judicial authorities for additional reports designed to throw light on the conduct of the condemned person, his family circumstances and other aspects of his personal circumstances.

Report of the Supreme Court of Justice

118. Article 680 provides that, once the provisions of the previous articles have been complied with, the file will be transmitted to the Supreme Court of Justice to enable the latter to prepare its report and decision as required by the Constitution. This must be done within two weeks in the case of a death penalty and within 30 days in other cases.

Decisions

119. Article 681 states that, if the report and recommendation of the Supreme Court of Justice are unfavourable, the Executive may not show clemency .If they are favourable, the Executive, acting through the Ministry of Justice, may refuse commutation or grant it, either as indicated in the report or the decision or differently; but it may not reduce the penalty to less than the duration recommended in the report.

Effects

120. Commutation does not extinguish civil liability or the effects of a repetition of the offence; but it does affect the length of any accessory penalties which may have been imposed during the period of the sentence.

Restrictions

121. No sentence which has already been commuted may be commuted a second time.

Obligations on the Public Counsel General

122. Article 684 provides that, whenever a final and enforceable sentence imposes the death penalty, the representative of the Public Counsel General attached to the Criminal Section of the Supreme Court of Justice is required to apply for commutation within five days following notification of the sentence on pain of a fine of 500 colones which will be imposed by the Public Counsel General on learning of any negligence in this regard.

Statistics

Period	Recommendations for commutation		Total
	Favourable	Unfavourable	
1.6.87 - 31.5.88	18	45	63
1.6.88 - 31.5.89	18	32	50
1.6.89 - 31.5.90	8	26	34
1.6.90 - 31.5.91	15	17	32
1.6.91 - 31.5.92	52	25	77
	111	145	256

Article 7

123. In Salvadorian criminal law torture has been completely abolished and prohibited, and acts of torture are criminal offences. Article 27, paragraph 2, of the Constitution prohibits imprisonment for debt, life sentences, degrading punishment, banishment and also all forms of torture.

124. In addition to having become a party to the Convention on the subject, El Salvador has subscribed to other instruments prohibiting the use of torture or of cruel, inhuman or degrading sentences or treatment.

125. Article 35 of the internal rules of the Executive assigns to the Ministry of Justice: "4. the organization, management and supervision of the functioning of penitentiary establishments and detention and rehabilitation centres". This means that the ministry must exercise supervision to ensure that prisoners are not subjected to torture by the prison staff and thus to safeguard their physical integrity and their dignity.

126. In El Salvador we believe that a prisoner is a human being and consequently must not only be subjected to restrictions and constraints while in prison. In accordance with human and constitutional rights, he may not be deprived, on account of his status as a prisoner, of a number of rights safeguarded by international conventions and provisions of national law.

127. A number of provisions in the Act concerning detention and rehabilitation centres (published in Official Gazette, No. 180, Vol. 240, of 27 September 1973) prohibit the use of torture.

"Article 5.

Guarantees affecting prisoners

The application of penalties and security measures shall not comprise any acts of torture or any vexatious acts or proceedings.

Any member of the staff of a penitentiary or detention centre ordering, committing or permitting such abuses shall be liable to appropriate disciplinary action, without prejudice to any liability he may incur under criminal law.

"Article 58.

Rules governing the application of disciplinary measures

Disciplinary measures shall be applied in such a manner and to such a degree as not to affect the health or the dignity of the prisoner or to reduce the remuneration he receives for his work.

The use of force is prohibited except where and to the extent that it is necessary to subdue a rebellious prisoner, to repel attacks by a prisoner or by other persons or to prevent collective acts of violence seriously threatening the security of the establishment.

"Article 70

Prohibition of use of violence

In the performance of their duties the prison staff shall refrain from the use of violence and from ill-treatment in word or in deed and may not inflict any punishment on prisoners without reporting any misconduct on the part of the prisoners to the director or officer-in-charge concerned. Any breach of this provision shall constitute grounds for dismissal, without prejudice to any liability the person concerned may incur under criminal law."

Article 8

128. The information provided in the previous report remains valid.

Article 9

129. In view of the fact that this article of the Covenant refers to the right to security of the person and to freedom of the individual generally, and consequently of the measures and machinery by which he may legally be deprived thereof, it seems to us necessary, to enable any person analysing this report to obtain a clear understanding of the situation, to recall the principal characteristics of legal proceedings, and the principles governing them, applicable to all judicial proceedings in El Salvador.

130. The criteria applicable to the different elements of legal process and proceedings vary according to the nature of the case; but one can single out some principles which, although not laid down specifically or systematically, can be encountered in the Salvadorian legal system. These are:

(a) exclusivity of jurisdiction (Constitution (Cn), art.172, para.1)

(b) independence of the judiciary (Cn, arts. 172(3) and (4), 182(13) and 186)

(c) impartiality of the body pronouncing judgement (Cn, arts. 15 and 188; Code of Civil Procedure (CCP), arts. 1152 ff.; Code of Penal Procedure (CPP), arts. 36-37)

(d) principle of equality before the law (Cn, art. 3; CPP, art. 7)

(e) principle of court hearing (Cn, art. 11)

(f) principle of prior judgement or legality of proceedings (Cn, art. 11; CCP, art. 2; CPP, art. 2)

(g) principle of gratuity of justice (Cn, art. 181;, CPP, art. 5)

(h) principle of prohibition of retroactive application of legislation (Cn, art. 15;, CPP, arts. 2 and 8)

(i) principle of the finality of the decision of a court (Cn, art. 11 and 17; CCP, art. 445; CPP, art. 4)

(j) right of petition (Cn, art.18)

(k) right of defence (Cn, art. 12; CPP, arts. 3, 46, 62 ff and 378)

(l) right of challenge (CCP, arts. 426, 436, 981 ff; CPP, arts. 509 ff)

(m) principle of congruency (CCP, art. 421; CPP, arts. 505-506)

(n) principle of statement of grounds for judgements (CCP, arts. 421, 427, 428; CPP, art. 507).

131. Other principles can be derived from the two systems - based respectively on a the investigatory principle and that of the right of free disposal - existing side by side in Salvadorian criminal law; the former is encountered in criminal proceedings and the latter in civil proceedings, but variations and special forms of proceeding are encountered in specific areas such as labour, transport, tenancy and commercial law and the law governing minors. In criminal proceedings, which are basically governed by the investigatory principle, one finds:

(a) the general rule of initiation of proceedings by the authorities (CPP, arts. 145 and 147)

(b) conduct of proceedings by the authorities (idem, art. 730)

(c) evaluation of evidence on a basis of sana critica (idem, art. 488),

while in civil proceedings - in which the right of free disposal predominates - we find the opposite principles:

(a) initiation of the proceedings by one of the parties (CCP, arts. 12 and 14)

(b) advancement of the proceedings by the parties (idem, art. 1299)

(c) evaluation of evidence on basis of legal provisions applicable.

Brief outline of criminal proceedings in el salvador

132. The purpose of criminal proceedings in El Salvador is to determine whether a criminal offence has been committed, to determine who committed it, to punish the guilty and to free the innocent. Criminal trials are conducted by ordinary process, summarily and in oral form.

133. Oral proceedings relating to minor offences are conducted exclusively by magistrates (jueces de paz). Proceedings are brief, and decisions and formalities are generally oral.

134. Proceedings may be initiated in one of three ways:

(a) criminal proceedings by the public authorities; here the judge may where appropriate institute proceedings by virtue of his office;

(b) criminal proceedings deriving from a private suit, of which notification has to given by the aggrieved party or his legal representative; here the judge may only initiate an investigation by virtue of his office in special cases. Proceedings of this type exist for some offences against morals or sexual freedom and for

some other types of offences, such as the issue of uncovered cheques. Once proceedings have begun they are conducted in the same manner as those initiated by the public authorities;

(c) finally, there are criminal proceedings brought privately (for such offences as defamation, abusive conduct and adultery); for the investigation and hearing of such cases a special form of complaint is required.

135. The submissions phase in summary proceedings requires a decision that this stage has begun. Following this, the submission of evidence is called for, after which the hearing takes place. This is a specific stage in the proceedings, which the parties attend to submit their allegations to the judge in writing or to amplify them verbally if so requested. This stage ends with the judgement, which the judge pronounces in accordance with the applicable norms for the evaluation of evidence. The judgement is subject to appeal.

136. The submissions phase in ordinary proceedings is very similar to that just described, save that some offences are tried before a jury while for others, such as kidnapping, blackmail and drug trafficking, there is no jury. In such cases the judge rules on his own authority.

137. When the offence carries a minimum penalty of eight or more years' imprisonment and the trial has to take place before a jury, the hearings take place in a court of first instance in a departmental capital or one of the larger towns in the 14 departments making up the Republic. Only judges with the appropriate territorial jurisdiction may hear such cases.

138. This restriction is designed to prevent members of people's courts from being subjected to pressures in places in which, owing to particular circumstances, particular groups or sectors have an interest in securing a particular outcome.

139. The sentence of the court is subject to appeal before the courts of second instance. Where the parties concerned do not appeal, the legislation governing proceedings requires that the sentence be reviewed by that court for purposes of confirmation, overturning or amendment in accordance with the law.

140. There is also a right of appeal in cassation, against sentences concerning offences carrying minimum penalties of three years' imprisonment or more, to the Criminal Section of the Supreme Court of Justice. The same right exists where the continuation of the proceedings has been rendered impossible by interlocutory measures.

141. There are also special rights of appeal, such as those of review and complaint on grounds of unlawful acts or delay in the dispensing of justice. The parties may invoke these instruments the better to safeguard their rights and interests.

142. Article 13 of the Constitution lays down the guiding principles to govern detention as follows:

"No government body, authority or official may issue orders of arrest or imprisonment except in conformity with the law; such orders shall always be in writing. An offender found in flagrante delicto may be

apprehended by any person, who shall immediately hand him over to the competent authority.

"Administrative detention may not exceed 72 hours in duration. During that time the detainee must be brought before the competent judge with the action (diligencia) he may have committed.

"Detention for investigation may not exceed 72 hours, and the competent court must notify the detainee in person of the reason for his detention, receive his statements and order his release or pre-trial detention before the expiry of that period.

"For purposes of protection of society any person whose antisocial, immoral or harmful activities reveal them to be in a dangerous condition and constituting an imminent risk to society or to individuals may be subjected to security measures of a reeducational or rehabilitative nature. Such measures must be strictly regulated by law and made subject to the authority of the judiciary."

143. It may be concluded from the foregoing that there exist three types of detention under Salvadorian legislation:

(1) arrest in flagrante delicto (Cn, art. 13, para. 1)

(2) administrative detention (idem, art. 2)

(3) judicial detention.

Administrative detention in El Salvador

144. The Code of Penal Procedure recognizes certain security bodies and designates them as auxiliary organs of the administration of justice. These bodies have wide powers to detain on an administrative basis any person who has committed an offence or is liable to prosecution, either automatically or on the initiative of a private individual, but in the latter case only after receiving appropriate instructions.

145. The problem which we have experienced with administrative detention for decades has been that these auxiliary organs have not respected the rights of detained persons. The latter have been refused, from the moment of arrest onwards, the right to be represented by defence counsel; they have been subjected to torture; and on occasion they have been held without their families being informed of their whereabouts. All the foregoing reflected serious violations of human rights.

146. On 23 July 1990 the Supreme Court of Justice, aware of this problem, issued Decision No. 267, establishing a Department for Information concerning Detained Persons. This measure was designed to guarantee the rights of detained persons as defined in domestic legislation and international laws on human rights applicable within the country and to introduce centralized control by the Supreme Court of Justice over all persons being held at the disposal of the different courts of the Republic or of the auxiliary organs of the administration of justice.

147. The purpose of the new department is to secure better control over all the detention centres in the country - penitentiary, police and municipal - with a

view to ensuring respect of the rights of detained persons and to prevent violations of human rights such as disappearances of individuals and the torture and ill-treatment of prisoners and, more generally, to prevent illegal and arbitrary detention by the public authorities.

148. The legal basis of this measure lies in particular in provisions of the Constitution (arts. 2, 12 and 13), the Basic Act concerning the Judiciary (art. 160 C, para. 1), the Constitutional Procedure Act (art. 4), the International Covenant on Civil and Political Rights (arts. 9 and 14), the San José Pact (arts. 7 and 9), the second Additional Protocol to the Geneva Conventions dated 12 August 1949 (art. 5) and the United Nations Standard Minimum Rules for the Treatment of Prisoner and Code of Conduct for Law Enforcement Officials.

149. Considerable progress has been made as a result of the creation of the new body; to some extent the problem has been overcome, and now at least compliance has been secured with the provisions of the law concerning the maximum period during which a person may be held by a security body and brought before a court. In addition, in extreme cases where a person requests information on a detained person and at that time the statutory time-limit is exceeded without the relevant report being received, as required by article 5 of the decision, that person may bring the matter before the Constitutional Section of the Supreme Court of Justice for remedial action. Since the new department is a public office, any person or public or private institution in the country has the right to seek from it, orally, in writing, by telephone or by fax, information on a person detained in any part of the Republic.

150. The auxiliary organs of the administration of justice detaining individuals in any part of the country and the judges in courts of first instance and in criminal, financial and military courts before whom detained persons are brought must inform the Department for Information concerning Detained Persons within 24 hours of the detention at the latest.

151. It is important to recall that the judiciary is currently undertaking studies with a view to establishing precise rules to govern detention by the police, designed to bring the conduct of the auxiliary services into line in all respects with the Code of Conduct for Law Enforcement Officials, approved by the United Nations General Assembly in December 1979.

152. Statistics concerning the work of the Department for Information concerning Detained Persons, giving details of the numbers of persons detained, released, transferred and brought before the courts, may be consulted in the archives of the Centre for Human Rights.

Judicial detention

153. This term relates to situations arising exclusively within criminal proceedings, when an official of the judiciary orders detention in the course of criminal proceedings against a person charged with an offence.

154. The procedure for detention of a person charged and brought before the judicial authorities is as follows: first, there is "detention for investigation", which, in accordance with article 13, paragraph 4, of the Constitution, may not exceed 72 hours, and during which the investigating official receives the statements of the detained person, informs him of the reasons for his detention, collects evidence concerning the offence being

investigated and, before the expiry of the permitted period, orders either the release of the detained person or "pre-trial detention" by means of an order duly motivated and with an adequate legal basis. Such detention ends if at a later stage the criminal proceedings are stopped or in accordance with the verdict of a jury given in full legal form.

Article 9, paragraph 2

155. The provisions of this paragraph are also included in the Constitution, article 12, paragraph 2, of which reads as follows:

> "Article 12. Any person charged with an offence shall be presumed innocent until his guilt has been proved in accordance with the law and in the course of a public trial in which he shall be ensured all the guarantees necessary for his defence.
>
> "The person detained shall be informed at once and in a manner that is understandable to him of his rights and the reasons for his detention, and may not be obliged to make a statement. He shall be guaranteed the assistance of a defence counsel in the proceedings of the auxiliary organs of the administration of justice and in judicial proceedings, under the conditions established by law.
>
> "Any statements obtained contrary to the will of the person concerned shall be of no value, and any person obtaining or making use of such statements shall be liable to criminal proceedings."

Rights of the accused

156. Article 46 of the Code of Penal Procedure provides that:

> "The accused shall have the following rights:
>
> "1. To be presumed innocent until declared guilty by enforceable judgement, without prejudice to measures prescribed by law for reasons of security or public order;
>
> "2. Not to be compelled to testify against himself;
>
> "3. To appoint a defence counsel before the proceedings begin;
>
> "4. To have no measures taken to restrict his freedom of movement at the place, and during the preparation, of an initiating order, without prejudice to any security measures which the judge may deem it necessary to order in special cases; and
>
> "5. To be compensated by the State in the event of judicial error established during a review of his sentence."
>
> "The accused shall also have the following rights:
>
> "(a) To be informed, at the time of his arrest, of the charges against him and of his right to call upon a lawyer to assist him; such assistance shall be limited to providing the accused with legal advice;

"(b) To be free of any form of physical or moral coercion which is in any way contrary to his will; and

"(c) to have none of his individual rights denied or restricted."

Article 9.3

157. Reference was made earlier to the forms of detention existing under Salvadorian law and to article 11 of the Constitution, which contains the basic provisions concerning legal proceedings. The statements made also apply in the context of this paragraph. We therefore consider it important to recall the three types of penal proceedings existing in El Salvador - ordinary, summary and oral - which were also referred to in the previous report.

158. With regard to paragraph 4 of article 9 of the Covenant, we have already described in detail the working of the remedy of habeas corpus.

Article 10

159. The principles and information on this article contained in the previous report are reaffirmed here. That information described in substance how the rights of detained persons as defined in the Covenant are matched by the provisions and rights contained in the Constitution of the Republic and the relevant secondary legislation on the subject.

160. The Ministry of Justice is responsible for administering the penitentiary system in El Salvador as regards its organization, management and control. The administration of all the penitentiary centres in the country is in the hands of the Directorate-General for Penal and Rehabilitation Centres, which is a department of the Ministry of Justice.

Penitentiaries (3):

La Esperanza Central Penitentiary

Eastern Region Penitentiary

Western Region Penitentiary

Detention centres (11)

Ilopango Rehabilitation Centre for Women

San Francisco Detention Centre

Usulután Detention Centre

Sonsonate Detention Centre

La Unión Detention Centre

San Miguel Detention Centre

Quezaltepeque Detention Centre

Sensuntepeque Detention Centre

Atiquizaya Detention Centre

Tonacatepeque Detention Centre

Penal Mental Hospital Centre

Hospital blocks (2)

Rosales Hospital

Mental Hospital

161. In the Penal Mental Hospital Centre and the two blocks in public hospitals treatment is given to sick prisoners requiring psychiatric or mental health care, general medicine or surgery. The infrastructure of these blocks is not of a prison type except as regards security; it has the modular characteristics of any hospital centre.

Staffing of the penitentiary system

162. The staff of the penitentiary system in El Salvador, which are a product of selection and recruitment, number 985 persons in all. Of these, 762 are security staff (600 warders, 75 chief warders, 19 inspectors and 28 commanders); the remaining 263 perform administrative duties.

Budget of the Directorate-General for Penal and Rehabilitation Centres

1992:	C 25,569,260	(US$ 2,938,995)
1993:	C 29,759,390	(US$ 3,420,620)

Food allowance for prisoners

The daily food allowance per head is:

Men	C 3.50	(US$ 0.40)
Women	C 5	(US$ 0.57)

As already stated, the prison population is large, and notwithstanding recent improvements nutrition standards are still inadequate. However, efforts are being made to improve he situation.

163. The resources invested in the different rehabilitation projects are distributed as follows:

Medical branch:

33 physicians

6 dentists

Psychological branch:

23 professional psychologists

Psychiatric branch:

1 psychiatrist

General aims of rehabilitation

164. The general aims of rehabilitation are:

(a) to expand the comprehensive assistance given to prison inmates and the specialized treatment given to condemned persons to facilitate the rehabilitation process;

(b) to promote the techno-criminological reform with a view to preventing reoffending, by making the treatment of inmates more human and reclassifying the prison population with a view to administering appropriate treatment;

(c) to strengthen the care given to women prisoners designed to facilitate the adjustment process;

(d) to promote skills development among prison staff to enable them to take an active part in promoting the rehabilitation of inmates;

(e) to promote the social reintegration of former convicts;

(f) to extend the scope of continuing psychological assistance.

The rehabilitation of delinquents

165. The duties of the Criminology Department, as laid down in article 13 of the Act concerning the organization of penal centres, include responsibility for determining the types of treatment applicable within the country - the term "treatment" here embracing all the strategies designed to make possible the achievement of the purposes of imprisonment, the rehabilitation of prisoners through reeducation and their reintegration into society, as laid down in the standard minimum rules for the treatment of prisoners. To this end the work plan covers such subjects as admission, classification within the prison population, comprehensive care of the prison population and criminological diagnosis and comprehensive assistance for the same, full occupation, prevention of drug addiction and treatment of addicts, mother and child care and the development of social skills. Priority attention is directed towards certain groups of prisoners as follows:

(a) Minors are placed under the authority of the Comprehensive Reeducation Centre for Juvenile Prisoners in Tonacatepeque, which undertakes the following tasks:

(i) the establishment of a number of evaluation criteria systematically applicable to all prisoners on the basis of their behavioural and personal shortcomings and excesses;

(ii) the design of activities specifically directed towards remedying the behavioural shortcomings identified;

(iii) the introduction of an objective system of continuing behaviour measurement, on the basis of which the system of classification of prisoners, comprising four categories or covering four stages of treatment, can be developed;

(iv) a continuing objective evaluation of results within the establishment after the release of minors with the aim of evaluating each individual in the light of his behavioural shortcomings prior to admission into the centre.

(b) Women. Currently women form a minority of prisoners - 5 per cent of the number of men. On these grounds it is considered that women prisoners do not receive sufficient care, since at present there is only one prison for women. It is situated in Ilopango and was damaged by the 1986 earthquake. It contains 209 inmates. The other 63 women prisoners are kept in small local prisons in annexes separate from the premises for men. They do not have access to the educational and work programmes organized for all male prisoners and are not allowed conjugal visits by their spouses or life partners. Consequently a comprehensive plan of care for women prisoners has been drawn up, and it is proposed to rebuild "A" block and repair the entire section with a view to introducing a classification of the prison population into three categories.

(c) Children. Women prisoners may keep with them children who have not yet reached compulsory school age and are in a state of abandonment outside prison. There are conflicting interests to be reconciled here; on the one hand, respect of the rights of the mother and of the specific mother-child relationship, and on the other, avoidance of the negative effects of living in a prison environment on the child. To this end the Directorate-General has given appropriate instructions to the Mothers and Children section in the Rehabilitation Centre for Women in Ilopango, where programmes are being developed with a view to protecting the physical and mental health of pregnant women, mothers and children held there.

(d) Long-serving prisoners. Within the penitentiary system in El Salvador there is a group of long-serving prisoners who hitherto have not been given preferential treatment in the implementation of the Comprehensive Care Programme for convicts. efforts are being made to develop specific activities designed to make these persons feel useful within the penitentiary system.

(e) Convicts generally. The aim of the treatment given to these persons is to prepare them for full-time occupation and to train them in social skills which will enable them to minimize the problems they will experience on leaving prison.

(f) The training of prison staff is also of the utmost importance to enable them to play an active part in the process of rehabilitation of prisoners. To this end training is being provided in the Penitentiary Training Centre in ten subjects - psychopathology; human relations; professional ethics; criminology; general psychology; spelling and drafting; laws and regulations governing the penitentiary system; sociology; and penitentiary logistics and security. So far 327 staff members have received training.

166. Under the provisions of the Act concerning the organization of penal and rehabilitation centres, there is a service in each prison providing health care for the inmates and maintaining health and hygiene standards. Each service contains medical and pharmaceutical sections. Where appropriate, penitentiaries and centres have dental units as well. The medical and dental centres functioning in penitentiary establishments are responsible, among other things, for providing medical, dental and health care services; the provision of medicines and articles in accordance with the needs of the moment and the numbers of inmates in each establishment; and periodic review of a system of individual examinations of inmates to detect infectious or contagious diseases.

167. In line with the principles of penitentiary legislation and current tendencies therein, efforts are being made to promote the social rehabilitation of inmates and to promote a maximum of personal self-confidence and a high standard of mental and physical health among the prison population, both short-term and long-term. These efforts include, or are being extended to include, training for the staff members responsible for the custody of inmates and of those engaged in the administration of penitentiary centres. The purpose of this phase, which might be described as the imparting of a "prison culture" to the security and administrative staff, is to awaken in them a social sensitivity and teach them to look on the inmates they have to deal with as human beings who, notwithstanding the fact that they have been placed under restraint for having offended against the laws which society creates for itself to permit a peaceful and harmonious existence, are nevertheless individuals who as such enjoy rights derived from human dignity. There are programmes of instruction in the development and implementation of the principles of penitentiary law and on the regime of human rights as specifically applicable to the prison population, which are attended by officials with the administrative responsibilities mentioned earlier.

168. It cannot be denied that there is overcrowding in the prisons, especially in the principal penitentiary centre, which contains 2,139 inmates but was designed to hold only 800. It has been ascertained that the problem arises from the fact that many of the inmates have not been convicted but are awaiting trial and thus are designated as criminals although they have not been sentenced. This situation provides justification for special legislation to the effect that some accused persons, who have already been detained for the maximum period to which they could be sentenced, and where the offences in question carry a term of imprisonment of between one and five years, could be released. There are plans to reduce overcrowding and to open more of the penitentiary centres which were closed for security reasons during the armed conflict.

169. It must be admitted that the arrangements for the treatment of inmates in the Salvadorian penitentiary system do not cover the whole of the planned programmes, as the building infrastructure is inadequate for the classification of inmates and the treatment of homogeneous groups. Equally, it has proved impossible to meet the assistance and treatment needs of the 5,565 persons imprisoned in El Salvador under the various programmes on account of shortages of specialized professional and custodial staff and insufficient budget credits.

Principal problems identified by the study of the prison system in El Salvador and possible solutions

170. The most serious problems identified in prisons generally mentioned in the "Diagnostic study of the penitentiary system in El Salvador" include the effects of life in a prison environment, problems of sexuality in prisons, drug

addiction and attempts against the lives and persons of inmates. Attempts are being made to overcome these problems through grouping or measures of an administrative nature - in other words, by the introduction of a system of treatment of prisoners which matches actual conditions in the country. The programmes and plans drawn up in response to the findings of the study are:

(a) Admission. The objective here is to speed up the machinery of justice and to take all necessary steps, at the time of admission of a convicted person into a prison to reduce as far as possible the psychological and social impact of loss of liberty;

(b) Reclassification of inmates. The aim is to achieve an orderly grouping of inmates within the different prisons to permit the administration of specialized treatment to homogeneous groups of prisoners. Inmates are being reclassified as follows:

1. Persons accused of traffic offences (La Esperanza penitentiary)

2. Preventive group: accused persons with records of good conduct (in most detention centres)

3. Condemned persons (in most detention centres)

4. Mentally ill prisoners (in the detention block of the psychiatric hospital and the La Esperanza penitentiary)

5. Homosexuals (in the Sensuntepeque detention centre)

6. Members of the armed forces (in the Sensuntepeque detention centre)

7. Prisoners with high levels of aggressivity (in the San Francisco Gotera detention centre)

8. Drug addicts (in the Quezaltepeque detention centre)

9. Women (in the Ilopango detention centre)

10. Minors (in the Tonacatepeque Juvenile Reeducation Centre);

(c) Creation and start-up of a comprehensive reeducation centre for juveniles. It is planned to locate inmates between ages 16 and 18 in a centre specializing in their comprehensive reeducation through a strengthening of values and positive attitudes towards the family, society, work and the mother-country with a view to achieving their reintegration into society and avoiding relapses into criminal behaviour;

(d) Care for inmates with AIDS. The objective here is to assist inmates suffering from the Acquired Immuno-Deficiency Syndrome (AIDS) in such a way as to enable them to live with their illness by providing support in different areas such as the intellectual, family and social spheres and that of economic productivity;

(e) Creation of a special block and implementation of programmes of treatment for highly dangerous inmates. The aim here is to promote the development of inmates of detention centres by providing special treatment for those with socio-pathological personality problems, thus promoting the physical and mental health of the entire population of the prison system;

(f) Treatment of inmates with problems of sexual identity at the Sensuntepeque centre. It is desired to give such inmates specialized treatment which will help them to modify their behaviour patterns;

(g) Refitting of Block 13 in the psychiatric hospital for the provision of comprehensive care for inmates with psychopathological problems;

(h) Care for inmates with high levels of drug addiction. The objective here is to provide specialized treatment for inmates with high levels of drug addiction with a view to contributing to their physical and mental well-being and to ensuring the safety of the rest of the prison population;

(i) Comprehensive care for women inmates. Here the objective is to provide women with psychiatric and medical treatment and care in the social, educational and labour fields in order to highlight their role as women and mothers and to integrate them into the country's social and productive development;

(j) Pre- and post-release care for inmates. The objective here is to help inmates adapt to their new circumstances as fully as possible;

(k) Establishment of a prison staff training school. It will be established in the La Esperanza central penitentiary. The purpose of this school is to provide custodial staff with a training which will enable them to play an effective part in the process of rehabilitation of inmates. New appointees will receive training before taking up their duties. Training will also be given to staff members already in service, particularly those applying for certain types of promotion;

(l) Literacy for all with a view to consolidating a basic knowledge of reading and writing, thus reducing the level of illiteracy in prisons;

(m) Continuing further reading designed to consolidate basic knowledge of reading, writing and arithmetic and to develop the capacity for reflection, understanding and discussion;

(n) Promotion of a positive attitude to work in detention centres. It is hoped to achieve this through work-orientated training designed to enable inmates to earn an income. The steps to be taken to this end are: to reorganize the work already being performed in detention centres; to plan and conduct campaigns to promote apprenticeship and skills training; to open up new opportunities for training and productive work; and to provide skills training and encourage inmates to engage in productive work.

Rules governing political crimes and ordinary crimes committed in connection with political crimes in El Salvador

171. The concept of political crimes, and the classification of crimes recognized as such, in our political system are to be found in article 151 of the Penal Code. This classification reflects the application of a number of doctrinal criteria - the objective aspect, which takes into account the nature of the organization of the State and of the legal asset damaged; and the subjective aspect, which also takes into account the political motive as an element determining the heinousness of the act with a view to assessing it in the light of the special nature of crimes of this kind.

172. With regard to the objective aspect, article 151 provides that "political crimes are punishable acts committed against the international or internal personality of the State, with the exceptions of abuse of the mother-country, its symbols and its leaders". The crimes attracting the heaviest punishment are treason (Pn, art. 381), which carries a sentence of between 15 and 25 years' imprisonment; intelligence with a foreign Power (art. 382), which is punishable by between 5 and 25 years' imprisonment, according to the circumstances; espionage (art. 386), the penalty for which ranges from 8 to 20 years'imprisonment for Salvadorian nationals and from 4 to 10 years for nationals of other countries; and rebellion (art. 392), which carries a penalty of from 1 to 5 years' imprisonment. It should be mentioned that all these crimes, with the exception of that of intelligence with a foreign Power, are punishable by death if committed during a war with another country or by a person subject to military law.

173. As regards the subjective aspect, the same article 151 states that "...Ordinary crimes committed for political ends, with the exception of crimes directed against the life and the person of a Head of State, shall also be deemed to be political crimes". This definition embraces practically all crimes committed for the furtherance of political ends with the exceptions mentioned in that article.

174. Finally, the last paragraph of article 151 provides that "... ordinary crimes which have a direct or immediate relationship with a political crime, or constitute a natural and frequently used means of preparing, carrying out or facilitating a political crime, are deemed to be ordinary crimes committed in connection with political crimes. Thus the following must be deemed to be connected with political crimes: in connection with rebellion, the theft or distribution of public property, extortion, the procurement of arms and ammunition, the possession, bearing and transport of weapons of war, the cutting of radio, telegraph and telephone lines and the retention of correspondence." In this connection the legislature has recognized the relationship which must necessarily exist between certain types of conduct, at the same time admitting the possibility of recognizing the connection between certain crimes of types specifically designated as political and others which, on account of the circumstances of the case, fall within the definitions given.

175. As regards the provisions laying down special rules to govern certain benefits and safeguards recognized for offences in this category and the rights granted to persons on trial for such offences, mention should be made of the following:

(a) a person sentenced for a political crime may not be deemed to have reoffended (Pn, art. 57)

(b) a confession obtained outside the judicial framework shall be valueless as evidence in proceedings for political crimes (CPP, art. 496)

(c) the statements made earlier in connection with the death penalty on the admissibility of applications for commutation or remission and the requirement ipso jure of initiation of cassation proceedings;

(d) the existence of a guarantee (in article 27 of the Constitution) that a foreign national may not be extradited for political crimes, even if they subsequently give rise to ordinary crimes; the same article provides a similar guarantee in favour of Salvadorian nationals in respect of any type of crime.

Special act concerning unconvicted defendants

176. In view of the disquieting backlog of work in the courts with which the current Supreme Court of Justice found itself faced when it began its work, an "Emergency Act to deal with the problem of unconvicted detainees" was enacted. There were in fact hundreds of accused persons who had not been sentenced but who had formed the subject of criminal proceedings lasting longer than the duration of the sentence passed could be reasonably expected to be. This situation illustrates how far behind the machinery of justice had fallen; in addition, it was developing into a violation of constitutional rights.

177. The new Act was published in the 29 May 1991 issue of the Official Gazette. As indicated in its article 16, it was valid for one year. Its purpose was to bring about the release of persons charged with certain offences who had been detained for excessively long periods without any judicial decision being reached on their cases. In all, 475 accused persons were released under this Act.

178. The implementation of this Act proved highly successful. Firstly, it contributed in some measure to the solution of the problem of unconvicted defendants since it gave them an opportunity of securing release under certain conditions; and secondly, it reduced the backlog of work before the courts.

179. In normal circumstances, under article 250 of the Code of Penal Procedure, release can be granted only to persons charged with offences creating liability to a fine or to deprivation of liberty for a period not exceeding three years. However, under the emergency Act opened this possibility in general terms to persons charged with offences carrying a custodial penalty of up to 8 years' imprisonment (art.2).

180. All these efforts, designed to bring about the prompt and efficient administration of justice, have not been in vain. Today the time-limits set by law are to a considerable degree complied with. To the same end Decision No. 434 was issued, stipulating that, with effect from 1 January 1992, all judges and courts are required to comply strictly with the time-limits set in the codes and other legislative instruments of the Republic, especially those relating to criminal proceedings; failure will create liability to the sanctions provided for in the Act concerning Careers in the Judiciary.

Information on the judges of the prisons inspectorate

181. The network of Rpresentatives of the Prisons Inspectorate was established by Decision No. 372 bis, dated 1 December 1989, in pursuance of article 690 of the Code of Penal Procedure, which assigns responsibility for the inspection of detention centres to the Supreme Court of Justice and to the courts of second instance, and of article 51 (20) of the Basic Act concerning the Judiciary, which, among other things, makes the Supreme Court of Justice in full sitting responsible at the highest level for the inspection of prisons.

182. The task of this inspectorate is to serve as an instrument for effective communication between the different penitentiary or rehabilitation institutions and the courts, particularly with regard to the situation of accused persons and the progress made in dealing with their cases. To this end a register is kept in which the personal particulars of the accused persons and all elements relating to the case are recorded. The inspectors may request the courts concerned for the necessary information on any case in order to determine whether any anomalous situation affecting the interests or rights of an accused person has arisen and intervene to have the case cleared up in a manner leading to a decision defining the legal position of the accused. It is important to mention that one of the principal functions of the inspectors is to give moral support to detainees and to act as watchdogs to ensure that their rights are respected and that their treatment meets the minimum standards set by the United Nations with a view to rehabilitating detainees so that they are prepared on release for reintegration into society.

183. There are representatives of the Prisons Inspectorate in tne following detention centres: the Rehabilitation Centre for Women in Ilopango; the Central Penitentiary; and the detention centres in Santa Ana, Sonsonate, San Miguel, Atiquizaya, Sensuntepeque, Quezaltepeque, La Unión, Usulután, San Francisco Gotera and Tonacatepeque.

Establishment of support units

184. The itinerant courts (mobile courts or support unit courts) consist of a judge of first instance rank, a clerk of the court and two assistants. Their principal function is to assist the courts of first instance throughout the Republic and to offer them technical and legal support with a view to speeding up the handling of the criminal cases before any court which has an excessive workload or backlog of pending cases before it. The unit determines the legal position of defendants as speedily as possible, either pronouncing appropriate sentence or taking a decision entailing acquittal (for instance, stopping the case).

185. The programme began with one unit; it achieved such satisfactory results that at one time there were as many as 12 in existence. At present there are only three in operation, one in each of the three regions of the country - Western, Central and Eastern; it is considered that the greater part of the backlog was dealt with by the itinerant courts which have now ceased to function.

The office of the judge advocate

186. Article 182 (5) of the Constitution of the Republic provides that "the Supreme Court of Justice shall be responsible for ensuring that justice is administered promptly and faithfully, to which end it shall adopt such measures

as it deems necessary." The Office of the Judge Advocate was created on 2 July 1990. Its principal function is to monitor and supervise the state of proceedings in the different courts and to ascertain the normal workload of each, its working capacity and any needs or shortcomings not so far remedied with a view to speeding up the handling of cases; to coordinate its work with that of the Prisons Inspectorate representatives with a view to establishing the legal position of accused persons by cooperating in the procedural aspects of decisions such as suspended sentences, conditional or unconditional release, stoppages of proceedings, etc. Likewise, it assists the Penal Section of the Court in matters relating to decisions on cases of commutation, cassation, remission and competence brought before it. It also helps with the drawing up and review of lists of jurors and the supervision and location of the staff of the new courts of the Republic.

187. The statistical tables concerning the work of the itinerant courts, the Office of the Judge Advocate and the Prisons Inspectorate during the years 1990, 1991 and 1992, and a report on the situation of unconvicted detainees during 1991, 1992 and the early months of 1993 are available for consultation in the archives of the Centre for Human Rights.

Article 11

188. As regards this article, reference is made to the information provided in the previous report, which demonstrated that Salvadorian secondary legislation is in line with the provision in article 27 of the Constitution, which "prohibits imprisonment for debt" and is itself in line with the provisions of article 11 of the Covenant.

Article 12

189. Article 5 of the Constitution establishes the right of freedom of movement within the territory of the Republic, the right of free choice of domicile or residence, the right of Salvadorian citizens to enter the country and the guarantee that they may not be expelled or be refused a passport or other identity document.

> "Article 5. Any person is free to enter the Republic, to remain on its territory and to leave it, subject to the restrictions established by law.
>
> "No person may be compelled to change domicile or residence except by order of a court of law in the special cases, and subject to the requirements, specified by law.
>
> "No Salvadorian citizen may be expatriated, or prohibited from entering the territory of the Republic, or be refused a passport for his return or other identity document. Equally, he may not be prohibited from leaving the country except by a decision or sentence of the competent authority issued in accordance with the law."

190. There are a number of legal grounds for restricting the right of freedom of movement in special cases such as those of persons suffering from infectious or contagious diseases or detained by order of the competent authority, or of minors who are abandoned or in social danger.

191. All nationals and aliens have the right of movement within the territory of the Republic without restrictions other than those provided for by law, for example, under article 29 of the Constitution, which provides that, as explained earlier, in the event of a state of emergency - in cases of war, invasion, rebellion, sedition, natural catastrophe, epidemic or other general catastrophe, or of serious disturbances of public order - the freedom of movement of individuals may be restricted.

192. The freedom of movement of an alien may also be restricted if he enters the country in a manner contrary to the Migration Act, and, in accordance with article 60 of that Act, he is liable to expulsion.

Right of choice of residence within the territory of the Republic

193. Both the Constitution and the Aliens Act stipulate that any person is free to enter the Republic, to remain on its territory and to leave it, subject to the restrictions established by law.

194. Domicile, inasmuch as it depends on the place of residence and the intention to remain there, consists, under the terms of articles 57 ff of our Civil Code, of the place of residence, combined with the actual or presumed intention to remain in it, since the domicile or residence is the place at which a person has established himself or normally plies his trade or profession, or where he has informed the municipal authority that he intends to remain. Since the intention to remain is not presumed, civil domicile in a place cannot be acquired by an individual by the simple fact of residing for a certain time in a dwelling belonging to him or to another person if his household is elsewhere or if, owing to other factors - as would be the case with a traveller, a person on a temporary assignment or a person engaged in itinerant trading - it is apparent that the residence is casual. Consequently the intention to remain and settle in a place is presumed from the fact that the person concerned has sold his possessions in one place and bought others in a different place, moving his residence to the latter.

195. Under article 5 of the Aliens Act an alien may, subject to compliance with the requirements of the law, take up residence within the Republic without losing his nationality.

Exceptions to the right of Salvadorian citizens to enter and leave the country

196. Article 4 of our Constitution states that "Everyone is free in the Republic". This provision is applicable without restriction to the freedom of both nationals and aliens to enter and leave the country and to reside in it. However, article 5 regulates entry and departure in the following terms: "Any person is free to enter the Republic, to remain on its territory and to leave it, subject to the restrictions established by law".

197. The control of migration is governed by the Migration Act, article 1 of which regulates the organization and coordination of the departments concerned with the entry of nationals into the territory of the Republic and their departure from it. Article 50, paragraphs (b) and (c), of the same Act stipulate that persons wishing to enter or leave the country temporarily must comply, in addition to the general regulations concerning migration, with the following conditions: they must be of full age and have full legal capacity, or, if such is not the case, they must be accompanied by the persons responsible for their

care or exercising guardianship or wardship over them or demonstrate that they have the permission of those persons; they must not be under sentence for any crime or offence; and they must not be the subject of a detention order.

198. The above are the exceptions to the general rule laid down in article 4 of the Constitution.

Article 13

199. Article 96 of the Constitution stipulates that an alien is strictly required, from the moment he enters the territory of the Republic, to respect the country's authorities and obey its laws. In addition, he acquires the right to protection by the Republic.

200. The law grants aliens a large number of rights, the most important of which are: the right to invoke treaties and agreements concluded between the State of El Salvador and their countries of origin when their rights are violated and to resort to diplomatic channels in cases of denial of justice after all the legal remedies open to them have been exhausted. As they enjoy rights, they are also prohibited from participating, directly or indirectly, in the internal politics of the country; if they breach this rule, they lose the right of residence. Aliens are also subject to the regulations applicable during suspensions of constitutional guarantees.

201. The Directorate-General of Migration keeps a register of aliens temporarily or permanently within the country; it also has the power to reorganize the register.

202. Article 12 of the Aliens Act states that aliens in the national territory shall enjoy the same rights as nationals with the exception of political rights and shall be subject to the same obligations. However, the State may, for reasons of public order or as a matter of reciprocity, restrict the exercise of these rights and obligations or make their exercise subject to special conditions.

203. The concept of alien natural or legal persons and the principle, existence, recognition, classification and aims of such persons shall be governed by the law of the country in the manner laid down, for instance, in the Civil and Commercial Codes. The same applies to the concepts of acquisition, loss and recovery of such status.

204. The Civil Code also regulates marriages of aliens with regard to the prerequisites for its celebration, the mutual rights and obligations of the spouses, divorce and nullity. It also regulates paternity, the mutual rights and obligations of parents and children, filiation and adoption.

205. The Civil Code also regulates the ownership, possession and methods of acquiring and registering movable and immovable property by aliens and the rights constituted thereover.

Article 14

206. With regard to this article, we confirm each and every principle affirmed and item of information supplied in the previous report, which basically relate to the recognition and current validity of the rights existing within legal proceedings. With regard to the latter, it is important to remember a number of

innovations and reforms (mentioned in various parts of this report) to improve the enforcement of all these rights. In this context we may mention all the steps, standards and measures introduced to avoid excessive delays in criminal proceedings (Office of the Judge Advocate, itinerant courts, Prisons Inspectorate).

207. We also consider it important to recall, in the context of this article, the principles applicable to legal proceedings which govern the work of the courts in El Salvador and which have been described in this report.

Article 16

208. Article 52 of the Civil Code pronounces on the subject of legal personality as follows: "Persons are natural or legal". All members of the human species, irrespective of age, sex, status or condition, are natural persons.

209. The right to obtain legal personality is regulated, albeit in a summary fashion, by the Civil Code, articles 541 and 543 (first paragraph) of which read as follows:

> "Article 541. Foundations and corporate bodies not established in accordance with an Act or a decree of the Executive shall not be legal persons.
>
> "Article 543. (1) The statutes or by-laws of corporate bodies, where drawn up by themselves, shall be submitted for approval to the Executive; the latter may approve them if they contain nothing contrary to public order, the law or good morals."

210. It follows from the above provisions that to be able to act as a legal entity a foundation, corporate body or association pursuing private interests must first obtain a positive response from the public authorities consisting of approval of its statutes and conferment of the status of a legal person on it. It must qualify for this conferment by meeting certain requirements. In the first place, it is important to remember that all entities which have established themselves on a primarily non-profit-seeking and non-political basis are entitled to apply for legal personality through their legal representatives. In addition, the statutes, which lay down the rules by which the entity is governed and have been drawn up by the entity itself, must be formulated in a coherent fashion, indicating the proposed aims and purposes of the entity, its organs of governance, etc. It is also of the utmost importance that, in accordance with article 542 of the Civil Code mentioned earlier, the statutes contain nothing contrary to public order, ~~the~~ law or good morals.

Article 17

211. Reference is made to the legal concepts and provisions concerning the protection of privacy, the family, the home and correspondence contained in the previous report.

Article 18

212. Reference is made to the legal concepts and provisions concerning freedom of thought and religion contained in the previous report. The following is added thereto:

Freedom of worship

213. In El Salvador freedom of worship is guaranteed by articles 25 and 26 of the Constitution, which read as follows:

> Article 25. Freedom to practise all religions is guaranteed without restrictions other than those dictated by morals and public order. No religious act shall serve to establish the civil status of any person.
>
> Article 26. The legal personality of the Roman Catholic Church is recognized. Other churches may obtain recognition of their personalities in accordance with he law."

214. In practice these constitutional provisions are fully applied. To appreciate this it suffices to recall that, between 1986 and May 1992, 155 churches of different religious persuasions obtained legal personality.

215. On this basis we can affirm that no form of worship has been officially adopted by the State in El Salvador but that, on the contrary, all the inhabitants of the Republic can exercise freely and publicly the form of worship which conforms most closely to their personal convictions. It is true that the above-mentioned article 26 of the Constitution recognizes ipso jure the legal personality of the Roman Catholic Church; but the same provision opens the door to all churches of other religious persuasions to seek the status of legal persons.

216. It is also important to bear in mind that, under article 3, paragraph 1, of the Constitution, no restrictions based on differences of nationality, race, sex or religion may be imposed on the enjoyment of civil rights.

217. As regards the fourth paragraph of this article, the Constitution of the Republic provides that parents have a preferential right to choose the form of education of their children.

Religious marriage in El Salvador

218. The civil marriage is the one which produces legal effects in El Salvador; under article 98 of the Civil Code, no religious marriage ceremony may be celebrated until the civil marriage ceremony has taken place. That article reads as follows:

> "After the celebration of the marriage in accordance with the provisions of civil law, the contracting parties may, according to the dictates of their consciences, undergo the rites of the religion they profess; but this act may not take place unless the certificate attesting that the civil marriage has been contracted has been presented to the minister of religion who is to officiate."

Article 19

219. In El Salvador freedom of expression is a right which is fully exercised. This is the result of the progress towards democracy, which is gathering strength daily in the Republic. Thus we can observe, in the different media of social communication, the most spirited of political debates between partisans of opposite ideological views, including the leaders of the Farabundo Martí National Liberation Front, today a political party, which for 12 years used

armed force as an instrument in its struggle for political power but today conducts its campaign from the platform offered by democracy and ideological pluralism.

Censorship of public performances

220. For 15 years now the Directorate for the Evaluation and Supervision of Public Performances (now the Directorate of Public Performances, Radio and Television) has been engaged in the extremely delicate task of censorship of public performances. It works in accordance with principles derived primarily from the legislative framework established in article 6 of the Constitution, the secondary legislation thereto and the relevant regulations with the aim of safeguarding the values of our society. The Directorate censors all cinematographic films and video tapes shown on the television channels or in any other type of public performance as defined in article 2 of chapter II of the Regulations concerning Cinemas, Circuses, Theatres, Radio Drama Broadcasts and Other Public Performances. It is responsible for censorship of all these items. For this task the term "evaluation" is used, since the Directorate does not confine itself to recommending cuts indiscriminately, but analyses the content and the ethical and aesthetic aspects of every artistic work; ultimately it issues a decision containing recommendations forthe omission of any scenes which comprise violence, obscenity or vulgarity or are lacking in artistic merit, according to the case, and fixing the minimum age of admission.

Pornography

221. The provisions of penal law applicable to pornography are to be found in articles 211 and 212 of the Penal Code:

> "Article 211. Any person who ... in a private place and for purposes of public performance, performs obscene acts or causes such acts to be performed shall be liable to 20 to 100 days' imprisonment and a fine.
>
> "Any person who arranges or permits the public presentation of performances which are offensive to public morality in places not licensed by law for the purpose shall be liable to 20 to 50 days' imprisonment and a fine.
>
> "Article 212. Any person who promotes consumption by the public of obscene writings, speeches, songs, photographs, cinematographic films or obscene pictures, books or postcardsgravely offensive to public morality, and any person who edits, sells, distributes or exhibits such items, shall be liable to 10 to 100 days' imprisonment and a fine."

In accordance with the above principles and in pursuance of these provisions, the Directorate of Public Performances, Radio and Television withholds authorization for items of the kinds mentioned.

Article 20

222. In line with the provisions of this article of the Covenant, article 487 of the Penal Code stipulates that public incitement to war is an offence: "Any person who engages in public incitement to a war of aggression shall be liable to imprisonment for one to three years". On the subject of advocacy of national, racial or religious hatred which constitutes incitement to discrimination,

hostility or violence, prohibited by the same article of the Covenant, penal legislation contains the following:

> "Article 406. Any person who engages in public incitement to disobey the law or to hatred or collective violence against specific groups of persons shall be liable, on grounds of such incitement alone, to imprisonment for six months to one year."

Articles 21 and 22

223. Article 7 of the Constitution recognizes the rights of association and of peaceful assembly in the following terms: "The inhabitants of El Salvador shall have the right to associate and assemble peacefully and without arms for any lawful reason. No one may be obliged to belong to an association."

224. No one may be restricted or impeded in the exercise of any lawful activity by the fact of belonging to an association.

225. Armed groups of a political, religious or corporate character are not permitted.

226. Clearly, the Constitution imparts an optional character to the right of association. Each individual decides freely for himself whether to join or not to join a particular body, and if he decides not to join he may not be impeded in the exercise of any lawful activity. Where a system of occupational association exists, he might automatically join the appropriate association, admission being an essential prerequisite for engaging in that occupation; in this way freedom to practise an occupation would be restricted. This cannot occur in El Salvador, since it would be contrary to the above-mentioned article of the Constitution.

227. On the subject of employers' and workers' associations, article 47 of the Constitution contains the following provision:

> "Private employers and workers shall, without distinction as to nationality, sex, race, religion or political beliefs, and irrespective of their activity and the nature of their work, have the right to associate freely for the protection of their respective interests by forming professional associations or trade unions. Workers in autonomous public institutions shall have the same right.
>
> "Such organizations shall have the right to legal personality and to due protection in the exercise of their functions. No order may be given for their dissolution or suspension may be given except in the cases and in accordance with the formalities specified by law.
>
> "Special provisions for the establishment and functioning of professional and trade-union organizations in the countryside and cities shall not restrict freedom of association. All exclusion clauses shall be prohibited."

Article 23

228. Reference is made to the concepts and legislation concerning the rights and measures provided for in this article of the Covenant.

229. Before beginning an outline of the situation of the family as an institution in law and practice in El Salvador, mention must be made of the creation of a public body - the National Secretariat for the Family (SNF) - which since its inception has been conducting its work in a comprehensive, perseverant and fruitful manner and has won the gratitude of the population as a whole.

230. The SNF was established by Executive Decree No. 22, dated 19 October 1989, in response to the problems identified in the analysis of the situation of families within the country. It was established to serve as a liaison unit between the Office of the President and public and private institutions in matters relating to family policy and as an apex organization coordinating, planning and evaluating policies focused on the family unit and each of its members.

231. The SNF is continuing to promote the welfare of the family in all its different aspects, promoting, coordinating and evaluating the participation of the different sectors within the country in programmes of care for the family unit. It is concentrating its efforts on children, minors, women and the elderly. For the performance of its tasks it comprises separate units for children; women; minors; the elderly; legal advice; community action; municipal banks; and communications.

232. The specific functions of the SNF are -

(a) to coordinate, plan and evaluate the policies of each of its members concerning the family;

(b) to promote changes in legislation with a view to protecting the family as an institution and to ensure the enforcement of the legislation already in force;

(c) to coordinate, supervise and evaluate the work of the institutions implementing programmes for the protection, rehabilitation and development of the individual members making up families;

(d) to promote and facilitate the action of the family unit, not only as an object of care, but also as an element of participation, promoting feelings of fraternity and solidarity within the population;

(e) to promote programmes designed for all those family groups which, owing to special circumstances, to not fall within the traditional definition of the family;

(f) to promote and monitor the enforcement of the rights of children with a view to ensuring the full development of their faculties;

(g) to propose guidelines and promote programmes for the care of juveniles, principally with regard to education, skills training and leisure activities;

(h) to give women incentives to develop their skills and potentialities to the full with a view to their integration and active participation in the development of the country;

(i) to strengthen the image of the family and of its members with the support of the social communication media.

233. Article 32 of the Constitution stipulates:

"The family is the fundamental unit of society and shall enjoy the protection of the State, which shall enact the necessary laws and establish the appropriate organizations and services for its integration, well-being and social, cultural and economic development.

"Marriage is the legal basis of the family and rests on the equality of the spouses before the law.

"The State shall foster marriage; however, the absence of marriage shall not affect enjoyment of the rights established for the benefit of the family."

234. The constitutional protection given to the family as an institution is laid down in articles 32 - 36 (chapter II: "Social rights", section 1: "The family").

235. The equality before the law of man and woman, based on the principle of the equality of all human beings as affirmed in article 3 of the Constitution referred to earlier, is reaffirmed in the context of marriage in paragraph 2 of article 32, which reads: "Marriage is the legal basis of the family and rests on the equality of the spouses before the law."

236. The last three Constitutions governing the functioning of the institution of State in El Salvador have repeatedly affirmed the equality of all individuals before the law; equally, in relation to men and women, the principle of equality in marriage has been affirmed. El Salvador is a party to international conventions banning discrimination on grounds of sex. In that context the draft Family Code, which was recently submitted to the Legislative Assembly on the initiative of the President of the Republic, Alfredo Cristiani, contains all the provisions necessary to achieve true equality between men and women, not only within marriage but also in non-matrimonial unions, and also equality between children born within and out of wedlock and between them and adopted children; for notwithstanding the fact that the principles of equality laid down in the Constitution are to a considerable degree respected, there are still certain concrete inequalities remaining in the secondary legislation and in practice. The draft Family Code is designed to put an end to these.

237. With regard to the principle of equality of rights and responsibilities between spouses, the following anomalies may be mentioned: under the current the Civil Code, it is the husband who chooses the domicile and residence; the wife is under obligation to live with him and follow him to wherever he may transfer his residence. The husband may refuse to provide maintenance for the wife if she refuses to live with him without just cause.

238. Another inequality (which, like the first, is to be remedied by the Family Code) is found in the recognized grounds for divorce. The grounds for dissolution of the legal bond of marriage are laid down in the Civil Code. These reflect the principle of equality mentioned earlier save for the following (items 1, 2 and 3):

(1) the pregnancy of the wife as a consequence of illicit relations which took place prior to the marriage and without the knowledge of the husband;

(2) adultery by the wife;

(3) adultery by the husband accompanied by public scandal or abandonment of the wife.

239. In addition, with regard to the equality of children born within and out of wedlock, notwithstanding the fact that article 36 of the Constitution confers on them equal rights with respect to their parents, even the secondary legislation does not fully respect this principle; specifically, under article 988 of the Civil Code, natural children are debarred from inheriting in cases of intestacy, preference going to the legitimate children.

240. The protection of children of a previous marriage is regulated by reference to the system of administration of assets. Thus a surviving spouse or a divorced person wishing to remarry must complete the formalities relating to second marriages required under article 8 of the Act concerning the Exercise of Voluntary Jurisdiction by Notaries and other formalities and article 812 of the Code of Civil Procedure; alternatively, an inventory may be deposited with the civil court of first instance.

Article 24

241. Articles 34 and 35 of the Constitution lay down the basic principles for the guardianship of minors:

"Article 34. Every minor shall have the right to live in family and environmental conditions that permit his full development, for which purpose he shall enjoy the protection of the State.

"The law shall determine the duties of the State and shall create the institutions for the protection of mothers and children.

"Article 35. The State shall protect the physical, mental and moral health of minors and shall guarantee their right to education and assistance.

"Antisocial behaviour by minors which constitutes a crime or offence shall be subject to special legal provisions."

242. In addition, the State, under the provisions of article 36 of the Constitution, guarantees the equality of children born within or out of wedlock vis-à-vis their parents:

"Article 36. Children born within or out of wedlock and adopted children shall have equal rights with regard to their parents, who shall have an obligation to give their children protection, assistance, education and security.

"No entry shall be made in civil registry-office records referring to the nature of filiation, and birth certificates shall contain no reference to the marital status of the parents.

"Every person shall have the right to a name identifying him. This matter shall be regulated by secondary legislation.

"The law shall establish methods for investigating and determining paternity."

Recognition of natural children and fixing of maintenance allowances by administrative process

243. Article 279 of the Civil Code provides that "children born out of wedlock may be recognized voluntarily by the father or, alternatively, be declared by the competent judge to have been recognized by him. They shall have the status of natural children."

244. In addition, under article 280 of the Civil Code, a natural child may be recognized "by deed deposited with the Public Counsel General of the Republic".

245. In pursuance of the above articles, the Office of the Public Counsel General of the Republic performs its constitutional function through the Department of Family Affairs. The latter consists of two sections (I and II) with identical functions. On the average, the department receives some 20 persons every day seeking to have their children recognized by their fathers; legal aid is granted after due analysis of the documentation submitted for the purpose. Following acceptance of an application, the presumed father of the child is summoned, and a conciliation hearing takes place with the primary objective of securing a positive outcome to the case; the staff assist, drawing on their legal knowledge and social considerations which have a bearing on the case. Generally, as a result of the work of the staff members, voluntary recognition of the child is secured. For this purpose the Office of the Public Counsel General keeps registers of recognitions of children in which the details are recorded and signed by the parties. This legal proceeding gives the child (or adult) concerned the status of natural child, and from that moment onwards the person concerned enjoys that status and obtains with it the rights and duties inherent therein. This function of the Department of Family Affairs has made a considerable contribution to the solution of one of the main problems of Salvadorian society, namely the high proportion of children born out of wedlock.

246. Once a natural child has obtained recognition, the competent municipal authorities of the place of birth of the child are notified, following which the civil registry office is required to annotate the birth certificate of the recognized child or adult accordingly.

247. In addition, the Department is the instrument through which the measures taken by the Office of the Public Counsel General have their impact within society, since recognition of a natural child establishes the right of the child to receive a regular maintenance allowance sufficient for his needs. To this end, and in accordance with articles 35 ff of the Act concerning the Organization of the Public Prosecutor's Department (which lay down the procedure for the fixing of maintenance allowances), the allowance is obtained from the father; it may either be fixed on a voluntary basis or, in the event of a refusal, be determined by administrative proceedings. The Office of the Public Counsel General, acting through the above-mentioned sections, sets on the average 60 maintenance allowances every month. The money is collected by the Deposits Control Section; it may either be deposited by the person concerned or deducted from his earnings at his place of work.

248. By these processes, which are conducted by one or other of the sections of the Department of Family Affairs, the Office of the Public Counsel General fulfils its constitutional duty of ensuring the defence of the persons or interests of individuals who are absent or prevented from administering their own assets; to represent in law persons with scant financial resources in order to defend their civil rights; and to ensure the official protection of families suffering hardship in order to ensure that the fathers pay maintenance allowances in respect of the children they have abandoned or, when the allowances they are paying are inadequate, increase their payments in line with their financial resources.

Civil registry offices in El Salvador

249. Article 4 (15) of the Municipal Code requires municipal authorities throughout the Republic to keep "civil registers of individuals". They must keep separate registers of:

1. Births
2. Deaths
3. Adoptions
4. Marriages
5. Divorces
6. Marginal notes
7. Recourse
8. Amendments
9. Special register of births (Decree No. 205)

250. The legislative instruments applicable to registers of births and adoptions in El Salvador, and which form the legal basis for their establishment, are:

Register of births

Act concerning the name of a natural person

Civil Code

Code of Civil Proceedure

Act concerning the Exercise of Voluntary Jurisdiction by Notaries

Act concerning recourse concerning civil registers and entries therein

Special Transitional Act concerning the provision of identity documents for persons affected by the hostilities (Decree No. 205, dated 12 March 1992)

Register of adoptions

Act concerning adoptions

Act concerning recourse concerning civil registers and entries therein.

Situation of children of Salvadorian nationals born in other countries

The legislation applicable is the Basic Act concerning Salvadorian Consular Services.

251. Owing to the armed conflict in El Salvador which lasted over 10 years, many civil registers have been destroyed, particularly in towns in the

departments of La Unión, San Miguel, Morazán, Usulután, Chalatenango, Cabañas, San Vicente, La Paz, Cuscatlán and some towns in the department of San Salvador. To deal with the problems of the persons affected the government, in coordination with the Legislative Assembly, has secured the promulgation of an Act to make it easier for such persons to obtain identity papers. Thus the Special Transitional Act to establish the civil status of persons without identity documents affected by the hostilities was brought into force by Legislative Decree No. 205, dated 12 March 1992, with effect from the date of publication of the latter in the Official Gazette. The Act is of a transitional nature; it is valid for one year and covers only registrations of births.

The right of the individual to a name

252. The right of every Salvadorian citizen top a name identifying him is stipulated in article 36, paragraph 3, of the Constitution and in secondary legislation (Act concerning the names of natural persons, promulgated by Legislative Decree No. 450, dated 22 February 1990, published in Official Gazette No. 103, dated 4 May of the same year). The latter provides that "Every natural person has the right to the name he uses legitimately and with which he distinguishes himself from others and identifies himself" (art. 1). The purpose of the Act is to establish regulations governing the formation, acquisition and protection of the names of natural persons and changes therein (art. 2). The Act contains 45 articles in all; articles 3 ff cover the following elements:

- the elements of the name of a person;
- the elements to be included in entries of birth;
- the persons authorized by law to assign names to individuals;
- elements of the given name;
- persons authorized to assign names to children born in wedlock;
- persons authorized to assign names to children born out of wedlock;
- cases in which the Office of the Public Counsel General of the Republic may assign names;
- given names which may not be assigned;
- procedure to be followed in cases of refusal of given names assigned;
- the elements of the surname;
- surnames of persons born in wedlock;
- surnames of children not recognised by the father;
- changes of name: permissible cases;
- concerning voluntary recognition by the father if this takes place after the date of the entry of birth;
- the surnames of adopted children;

- changes of name by court order;
- the surname of a married woman;
- the surname of a widow;
- cases in which changes of surname or given names may take place and the procedure to be followed;
- extension of a change of surname and to whom it may apply;
- judicial notification of a change of name;
- on the changes to be made in identity documents in the event of a change of name;
- the rights and obligations deriving from a change of name;
- usurpation, disregard and improper use of a name;
- establishment of identity by application;
- proof of name;
- assignment of a name to a foundling;
- procedures for cancellation of an entry of birth;
- presumption of authority;
- application of the Act by consuls;
- ensuring of conformity of names with the Act;
- procedures in the event of a mistake in the recording of a name;
- registrations of births and changes therein;
- reference to general legislation, the regulations and the instruments providing for exceptions.

It is important to remember that article 4 of the Act, which refers to the elements of a name, stipulates that the entry of birth must include the other particulars required under the Civil Code.

253. The civil and commercial section and the notarial section of the Office of the Public Counsel General of the Republic provide legal assistance to persons of modest means who have suffered prejudice regarding the use of their surnames or given names. The person concerned addresses himself to the civil and commercial department; there an application is prepared and addressed to the notarial department so that, in the presence of a notary of that department, a public deed can be issued modifying the name and thus meet the needs and claims of the person concerned.

The right to Salvadorian nationality

254. Nationality is a legal bond joining an individual to a particular State. It is an element of personal status establishing his citizenship of that State, giving him the right to demand its protection and imposing on him the obligations contained in its laws. It is governed by title IV of the Constitution, article 90 of which specifies which persons are Salvadorian nationals by birth, namely - (1) persons born in the territory of El Salvador; (2) children born of a Salvadorian father or mother outside the country; (3) persons who originate in the other States which constituted the Federal Republic of Central America and who, being domiciled in El Salvador, declare to the competent authorities that they wish to become Salvadorians (they are not required to renounce their nationalities of origin).

255. Article 92 of the Constitution deals with the right to obtain Salvadorian nationality by naturalization, which applies as follows:

(i) to Spaniards and Hispano-Americans by origin who have resided in El Salvador for one year;

(ii) to aliens of any other origin who have resided in El Salvador for five years;

(iii) to an alien male married to a Salvadorian woman or an alien woman married to a Salvadorian man who produces evidence of two years' residence in the country.

256. In accordance with the Aliens Act, nationality is conferred by the Ministry of the Interior. One special case of acquisition of Salvadorian nationality deserves mention: that of naturalization conferred by the legislature on persons who have rendered outstanding services to the Republic.

257. Under article 50 of the Aliens Act persons obtaining Salvadorian nationality through naturalization renounce their nationality of origin save where a treaty is in force between the Republic of El Salvador and his country of origin permitting him to retain the nationality of the latter, and always subject to the principle of reciprocity between the States concerned.

258. Article 91 of the Constitution gives Salvadorian nationals the right to possess two or more nationalities. The purpose of this provision is to give the greatest possible protection to nationals who, for various reasons, wish to opt for another nationality.

Programmes and activities of the National Secretariat for the Family in the field of protection of children

259. The principal programmes and activities of he SNF include the following:

(a) Children falling within the category of "street children". Special attention is paid to children in this category. At the end of 1991 the government, through the intermediary of the SNF and with the support of UNICEF, put into operation a programme of physical and psychological rehabilitation and social reintegration. To this end it established an "open centre" where children receive food, lodging, health care, educational guidance, psychotherapy and occupational therapy;

(b) The establishment of a Preventive and Care Centre for Ill-treated Children (CEPREMIN), which works together with the Salvadorian Association for Promotion, Training and Development (PROCADES). This centre cares for children who have been subjected to violence and develops preventive programmes in the area of ill-treatment of children. CEPREMIN performs its task of protecting children through five departments - (i) a programme for the prevention of ill-treatment of children and for dissemination of respect for the child by means of informal discussions in schools, communities and private and public institutions; (ii) psychological assistance and therapy for families; (iii) assistance in individual cases and social and economic inquiries; (iv) legal advice, assistance and follow-up in family disputes; and (v) a school for parents which gives educational guidance to the family group at regular working sessions. Programmes of the last-mentioned type are also in operation in communities;

(c) Comprehensive assistance to victims of sexual abuse. Within this programme three clinics have been established in hospital centres within the country to provide care for victims of sexual abuse. The principal victims of abuse of this type are adolescent girls under 15 years of age; it causes traumas which affect their behaviour and social perceptions for the rest of their lives. Within this programme victims receive medical, psychological and legal assistance;

(d) The "Young Mothers" programme. This programme was launched in response to high rates of reproduction, high levels of abandonment of education caused by pregnancies and the harmful effects of repeated pregnancies on the health of women, which aggravate problems of mother and child mortality. The principal objective of the programme is to help adolescent girls not to become pregnant again and to impart to them occupational skills which will enable them to obtain better-paid jobs. They are also taught about the reproductive process and methods of family planning and given a better understanding of their sexuality;

(e) The "Plan your life" programme consists of courses designed for minors over age 14. They are given elements designed to facilitate reflection and free and conscious decision-making. The courses consist of two-day modules and are organized with the support of community leaders. They cover subjects such as reproductive health, the sexual response in humans, family planning and sexually transmitted diseases;

(f) The "Maternal and community homes" programme is designed - (i) to provide primary health, nutritional and educational care for minors in reduced financial circumstances; (ii) to inculcate within the life of the family community habits and standards appropriate to ensure the normal development of the minor; and) to create within the community the necessary conditions for the autonomous management of the homes and thus ensure that they will continue to function over time. These homes cater for children between ages 7 and 12.

The Salvadorian Council for Minors

260. The Salvadorian Council for Minors is an autonomous institution under public law. It is empowered to orientate State policies with regard to minors and to monitor their implementation and that of the Minors' Code and other legal instruments relating to the protection of minors.

261. Its establishment is a significant step towards securing coordination among all public and private institutions in the priority task of providing care for children. Thus its apex decision-making and guideline-formulating body consists of 10 members, representing respectively the Ministries of Justice, Education, Health, Labour and Defence, the Office of the Public Counsel General of the Republic, the Supreme Court of Justice and the National Secretariat for the Family. There are also two representatives of non-governmental organizations.

262. The principal policies of the institution include the following:

(a) in-depth studies;

(b) concentration of attention on the most deprived sectors;

(c) securing the active participation of families and communities in its work;

(d) preventive activities conducted through family guidance schemes;

(e) inter-institution cooperation;

(f) the regionalization of the services it offers;

(g) the technical strengthening and supervision of services for minors.

Article 25

263. Before beginning the detailed description of political rights, their exercise in practice and the legal framework protecting them, it is considered important to recall the constitutional features of the form of government existing in El Salvador. The government of El Salvador is republican, democratic and representative. It is republican because the post of Head of State is filled by direct election in which the entire electorate participates; under the terms of the Constitution he is elected for a five-year term. It is democratic because it is a form of government based on the concepts of the political equality of all citizens and the respect of the rights and freedoms of every individual; but above all because it is representative and pluralist and based on a constitutional regime which of necessity respects rights and fits within the concept of a State governed by the rule of law. It is representative because sovereignty lies in the hands of the people; consequently power flows from the people and is exercised by delegation. It is also representative because the will of the nation is expressed through the procedures of selection and nomination of its representatives through the instrument of universal suffrage.

The participation of the citizens in the political life of the nation

264. The participation of the citizens in the political life of the nation is a direct corollary of the democratic and representative character of the form of

government practised in El Salvador. Salvadorian citizens have political rights and duties which make them into direct participants in the political life of the country. Article 71 of the Constitution provides that "all Salvadorian nationals aged 18 years or more are citizens."

265. Title II of the Constitution of the Republic defines the political rights and duties of citizens as follows:

The political rights of citizens:

(1) to vote;

(2) to join associations in order to form political parties in accordance with the law and to join already established parties;

(3) to seek public elective office, fulfilling the requirements established in the Constitution and secondary legislation.

The political duties of citizens:

(1) to vote;

(2) to obey the Constitution of the Republic and to ensure that it is complied with;

(3) to serve the State in conformity with the law.

266. The right to vote also includes the right to vote in the popular referenda provided for in the Constitution.

267. However, the political rights of a citizen may be suspended or withdrawn, according to the seriousness of the case. They may be suspended for the following reasons:

(i) condemnation to a prison sentence;

(ii) mental disorder;

(iii) judicial interdict;

(iv) refusal without good cause to undertake afunction deriving from popular election; in this case the suspension will continue for the period during which the function should have been performed;

and withdrawn for the following reasons:

(i) notoriously depraved conduct;

(ii) the infliction of a prison sentence in respect of a crime;

(iii) the purchase or sale of votes in elections;

(iv) the signature of acts or proclamations or the membership of associations seeking to ptromote or support the reelection or continuation in office of the President of the Republic,or the taking of direct action in pursuance of that end;

(v) interference with the freedom of voting on the part of any official, authority or agent of such authority.

In all these cases the political rights of the citizen may be restored by an ress declaration of rehabilitation by the competent authority.

Voting - a right and a duty

268. To be able to exercise his right to vote, a Salvadorian citizen must complete the following requirements laid down by law:

(1) register on the electoral roll;

(2) obtain an elector's card.

The first of these requirements is laid down in article 77 of the Constitution and the second in article 40 of the Electoral Code. In addition, article 40 of the Code mentions certain circumstances giving rise to incapacity to exercise voting rights.

269. The exercise of voting rights cannot be delegated or renounced. It enables citizens to participate in elections and perform their electoral duties in the elections of -

(a) the President and Vice-president of the Republic;

(b) the members of the Legislative Assembly;

(c) the members of the Central American Parliament;

(d) members of municipal councils.

Methods of election

270. The methods of election are as follows:

(a) Presidential elections take place by direct majority vote. If on the first ballot no candidate obtains the proportion of votes necessary for victory, a second ballot is held between the two candidates with the greatest numbers of votes;

(b) Elections to the Legislative Assembly and the Central American Parliament are based on proportional representation in departmental and national constituencies;

(c) Municipal councils are elected by simple majority.

Universal character of suffrage

271. Salvadorian citizens do not have to comply with any conditions in order to take part in elections. However, as was seen earlier, to exercise their right to vote they must be registered on the electoral roll and be in full possession of all their civil and political rights. The electoral roll has two important features:

(i) it ensures, by a process of validation, that each citizen is registered only once and that he votes only once;

(ii) all electors have access to the electoral roll.

Right of association to form political parties

272. The first step takes place where 100 citizens in full possession of their civil and political rights formulate the wish to form a party and make written application to the Supreme Electoral Tribunal (TSE) to be allowed to conduct propaganda activities for a period of 60 days with a view to obtaining a membership of 3,000 persons. During this period they use the name of the party followed by the words "in course of organization". The signatures are verified by the TSE over a period of 60 days. Once the necessary requirements have been met the Tribunal recognizes the party's legal personality and approves its statutes; it then has legal existence until that date of the requisite publication in the Official Gazette. Once this requirement has been met, the party's existence is recorded in the appropriate register.

273. Ministers of any religion, members of the armed forces on active service and members of the national civil police may not belong to political parties, seek elective office or engage in political propaganda of any kind.

Voting procedures

274. The voter hands his elector's card to the President of the Electoral Board, who verifies its authenticity and the department or municipality in which, according to the card, he is a voter. He checks that the citizen has not voted already (by verifying that none of the voter's fingers have been painted with indelible ink), hands the card to the secretary and gives a ballot paper to the principal member of the board. The secretary finds the voter's name on the electoral list, checks the number of the card and stamps the line in the list on which the voter's name appears; he then hands the card to the principal member, who hands over the ballot paper to the voter. The latter then goes into the polling booth and there makes a mark against the symbol of the party he prefers, making a cross or some other symbol clearly denoting his intentions. He then folds the paper and places it in the ballot box (a translucent plastic box). Having done this, he must dip a finger in indelible ink and his elector's card is returned to him. This procedure was used in the 1988, 1989 and 1991 elections.

Structure of the Supreme Electoral Tribunal as stipulated in the Constitution and present composition

275. The Supreme Electoral Tribunal was established within the framework of the reform of the constitutional provisions on electoral matters introduced in April 1991. It supersedes the former Central Electoral Council. Its present composition reflects the fact that it not only supersedes the Council but also has to complete the latter's current mandate, which began on 1 August 1989 and ends on 31 July 1994. Thus the first Tribunal is established in accordance with the transitional provisions contained in article 38 of the constitutional reform, which reads as follows:

"The first Supreme Electoral Tribunal shall consist of five judges, who shall be elected by the Legislative Assembly in the following manner:

"Four judges shall be elected from lists submitted by the four political parties or alliances which obtained the largest numbers of votes at the last Presidential election, to be elected by simple majority; one shall be elected, with at least two-thirds of the elected deputies voting in favour, from a list submitted by the Supreme Court of Justice; this judge must have the requisite qualifications to be judge in a court of second instance and have no party affiliation.

"The judge proposed by the Supreme Court of Justice shall be the President of the Tribunal."

276. Thus the first Tribunal consists of a non-party President and four judges representing the following political parties: the Nationalist Republican Alliance (ARENA); the Christian Democrat Party (PDC); the National Conciliation Party (PCN); and the Convergencia Democrática alliance (CD).

277. Once the mandate of this first Tribunal expires, it will be composed in accordance with article 208 of the Constitution, which stipulates:

"There shall be a Supreme Electoral Tribunal consisting of five judges, who shall be elected by the Legislative Assembly for a term of office of five years. Three of them shall be elected from lists submitted by the three political parties or legal alliances which obtained the largest numbers of votes at the last Presidential election, one from each list. The remaining two shall be elected, with at least two-thirds of the elected deputies voting in favour, from two lists submitted by the Supreme Court of Justice; each must have the requisite qualifications to be judge in a court of second instance and have no party affiliation.

"There shall be five alternate judges, elected in the same manner as the titular judges. If for any reason a list is not submitted, the Legislative Assembly shall proceed to the election without the missing list.

"The presiding judge shall be the one proposed by the party or legal alliance which obtained the largest numbers of votes at the last Presidential election."

278. The Supreme Electoral Tribunal is the supreme authority in electoral matters, without prejudice to the remedies established in the Constitution in respect of violations thereof.

Development of the electoral roll in El Salvador

279. Initially the electoral roll was established on the basis of the registers of the personal identity certificates issued by municipal authorities throughout the country. However, this system was not very reliable, as it allowed unscrupulous individuals to obtain these certificates, and irresponsible officials to authorize their issue, without any effective verification. This situation severely affected the structure of the electoral roll in El Salvador.

280. The Constitution stipulates that an essential precondition for voting is to be registered on the electoral roll compiled by the Supreme Electoral Tribunal. It should be recalled that the former Central Electoral Council (CCE) had proposed the establishment of a new electoral register and made great efforts to complete that task.

281. During the different elections held during the past few years the CCE made every effort to achieve complete reliability in the electoral process, although aware that to do so it would have to overcome many obstacles and difficulties of legal and other types, since, as was mentioned earlier, the electoral roll depended to a considerable degree on the information provided to the institution by the 262 municipal authorities existing in the country. This initial dependency on municipal authorities gave rise to numerous errors, which had considerable repercussions within the electoral roll, giving rise to many shortcomings.

282. After analysing the legislation concerning elections and the electoral registration systems in other countries, and in the light of its own experience and of the constitutional requirement that a new roll be established, the CCE proposed the introduction of a system which would both meet constitutional requirements and fully guarantee the free exercise of voting rights. Thus on the basis of the studies carried out, and having in its possession microfilm copies of the birth certificates of over 90 per cent of all voters in the country and also of the death certificates, it was building up a substantial data bank offering an opportunity to develop an automated system within which the records of the births of all the citizens in the 262 municipalities in the country would be recorded on computer.

283. This process was complemented by another system designed to permit a true and accurate census of all the persons present in the country. The exercise was carried out on a nation-wide basis; it sought to obtain the registration of every person aged 18 or over in the country by means of applications or forms specially designed for the purpose. Considering the magnitude of the task, this census, or registration process, was completed in a relatively short time. The next step was to record all the applications in the computer and then to check each against the information already stored in the computer and the microfilmed entries of births and deaths. In this way large numbers of consistent registrations were obtained which were used to draw up the initial lists in the electoral roll.

284. The foregoing constituted a fairly difficult task. Today the electoral roll, although not perfect, is nevertheless reliable and has ensured and increased the validity of the most recent elections. We are certain that the remaining obstacles will gradually be overcome and that the roll, although it will never be perfect, will become less and less imperfect. To this end we have requested technical assistance from countries whose electoral rolls have reached advanced standards.

The electorate of El Salvador

285. Every Salvadorian national acquires citizenship on reaching the age of 18 years. The electorate consists of all the citizens with the capacity to vote who have applied for registration in the electoral roll and received an elector's card. However, it is impossible to give an accurate figure on the size of the electorate on account of the lack of exact figures on the population, including Salvadorians living abroad as well as those living in the country. The last population census took place in 1974. One must also take into account factors such as population movements caused by the hostilities, temporary migrations within the country occasioned by harvesting (involving 400,000 persons) and emigration (it is estimated that there are 1 million Salvadorians living in the United States alone). In addition, every year some

120,000 young Salvadorians acquire citizenship. Thus it is impossible to determine exactly the size of the electorate.

Estimated size of electorate:

1988	2,000,000
1989	2,800,000 - 3,000,000
1990	3,200,000

The electoral register: autonomy; compilation; equality in registration

286. The principal activities of the Supreme Electoral Tribunal include the establishment of an electoral roll which is exact, credible and reliable; ensuring that every Salvadorian, on reaching legal age, is entered on that roll, the entry enabling him to vote; facilitating voting, so that the turnout in elections is high; and ensuring that each citizen only votes once.

287. It should also be borne in mind that the Constitution specifically states that registration on the electoral roll is an essential condition for voting.

288. Prior to the 1991 constitutional reforms, the Constitution provided that the electoral roll was to be established independently by the Central Electoral Council. Today the Supreme Electoral Tribunal has sole powers in this area.

289. The compilation of the electoral roll involves a number of successive steps.

(a) The citizen must present himself, with his personal identity certificate (or other document accepted by the Supreme Electoral Tribunal), at one of the registration centres existing throughout the country, where an Application for Registration on the Electoral Roll (SIRE) is completed on his behalf by the officials of the Supreme Electoral Tribunal. For record purposes he is given a copy of the application. SIREs are not accepted during the 30 days preceding an election (Electoral Code, art. 22).

(b) The SIRE is sent to the computer centre of the Supreme Electoral Tribunal, which, by a process of validation, verifies new registrations, dual registrations, changes and complaints, and also the existence of an entry of birth for the applicant in its computerized archives.

(c) Once the computer centre has validated the SIRE, it prepares a card containing the personal particulars of the citizen and assigns him an internally generated 14-digit number (the first two indicating the department, the next two the municipality, the next six the date of birth of the citizen and the last four a correlative number (assigned in order of submission of applications) included to distinguish between individuals born on the same day in the same place. The card is then sent to the municipality in which the citizen has indicated on his SIRE that he wishes to vote.

(d) The centres for the issue of electors' cards, of which there are 60, receive the validated cards. They do not inform individuals of the receipt of the validated SIREs; they have to wait until each individual presents himself. When he does so, an elector's card is

prepared for him with special machinery, based on a reduced reproduction of the validated card. The latter is returned to the computer centre, which then incorporates it in the roll of persons entitled to vote.

There are currently 128 registration centres located throughout the country to enable citizens to register on the electoral roll in order to exercise the political right, enshrined in the Constitution, of citizens to vote without preconditions and in accordance with the requirements of the law.

Factors affecting the registration process

290. The following factors affect the registration process:

(a) The absence of a centralized national civil register and of any legislation laying down compulsory standards (formats for registrations of births, order of registration of surnames and given names, etc.);

(b) The large and increasing proportion of illegitimate filiations; the indiscriminate use of the surname of the father or the mother, changes of name for reasons of recognition, etc.

291. The supervisory rights of the political parties were considered in the context of constitutional reforms introduced by means of Decree No. 38 of 15 December 1983.

292. Since the process of democratization, which is daily gathering strength in this country, has required the concertation of the different political forces with a view to contributing to the restoration of the country, the need has been recognized for the introduction of reforms in the constitutional provisions relating to the electoral system with the firm intention and the duty to bring about national reconciliation and the restoration of the unity of Salvadorian society.

Functions of the process of popular election

293. The President and Vice-President of the Republic, the members of the Legislative Assembly and the Central American Parliament and the members of municipal councils are elected officials, selected through electoral process by the votes of the citizens.

294. Our electoral system is only partially based on the principle of proportional representation. The party with the majority takes all the posts of councillor and alderman, the numbers of which are fixed in accordance with the numbers of inhabitants of the municipality concerned.

295. The Legislative Assembly consists of 84 deputies, who are elected as follows:

(a) 20 titular deputies and their alternates are elected on a national constituency basis.

(b) 64 titular deputies, and a like number of alternates, are elected in departmental constituencies, the numbers of seats in which are fixed

in accordance with the number of inhabitants of each department as follows:

Department	No of deputies
San Salvador	16
La Paz	3
Santa Ana	6
Chalatenango	3
San Miguel	5
Cuscatlán	3
La Libertad	5
Ahuachapán	3
Sonsonate	4
Morazán	3
La Unión	4
San Vicente	3
Cabañas	3
Usulután	3

296. However, the question of proportional representation is raised in the draft proposal submitted by the Electoral Subcommittee of the National Commission for the Consolidation of Peace. It is argued that proportional representation will eliminate the principal defect of majority-based systems, under which minorities are unable to obtain adequate, fair and democratic representation in municipal councils; whereas under proportional representation not only would the majority party have the opportunity of securing seats in councils, but the minority parties would also have the opportunity of winning a few seats in proportion to the numbers of votes they obtained.

297. In conclusion, we have a mixed system; municipal councillors are elected under a simple majority system, the President and Vice-President of the Republic under a two-ballot majority system; and the deputies under a proportional representation system.

Present composition of the Legislative Assembly

298. The Legislative Assembly is a collegiate body consisting of deputies elected in the manner prescribed in the Constitution of the Republic.

299. Article 11 of the Electoral Code specifies clearly the form and composition of the Legislative Assembly in the following terms:

"The Legislative Assembly shall consist of eighty-four deputies and shall be made up as follows:

(a) 20 titular deputies and 20 alternates elected on a national constituency basis;

(b) 64 titular deputies and an equal number of alternates elected in departmental constituencies the seats in the following numbers:

1. Department of San Salvador: 16 titular members and 16 alternate members

2. Department of Santa Ana: 6 titular members and 6 alternate members

3. Department of San Miguel: 5 titular members and 5 alternate members

4. Department of La Libertad: 5 titular members and 5 alternate members

5. Department of Usulután: 4 titular members and 4 alternate members

6. Department of Sonsonate: 4 titular members and 4 alternate members

7. Department of La Unión: 3 titular members and 3 alternate members

8. Department of La Paz: 3 titular members and 3 alternate members

9. Department of Chalatenango: 3 titular members and 3 alternate members

10. Department of Cuscatlán: 3 titular members and 3 alternate members

11. Department of Ahuachapán: 3 titular members and 3 alternate members

12. Department of Morazán: 3 titular members and 3 alternate members

13. Department of San Vicente: 3 titular members and 3 alternate members

14. Department of Cabañas: 3 titular members and 3 alternate members."

300. The present composition of the Legislative Assembly clearly reflects the existence of ideological pluralism, since it is composed of political parties with differing ideologies. Thus there is a multi-party composition which one might describe as the outcome of the offers made to the electorate by the

political parties in a kind of electoral market, in which the deals are actually concluded on election days.

The "political debt"

301. The electoral laws in force stipulate that political parties taking part in elections to the presidency or Vice-Presidency of the Republic, to the Legislative Assembly or to municipal councils are entitled to receive from the State a sum of money for each valid vote received. This process is known as the "political debt" and is recognized to be a means of financing the competing political parties with a view to promoting their freedom and independence.

302. The amounts currently payable are as follows: 14 colons per vote in the first ballot for the Presidency and Vice-Presidency of the Republic; 10 colons in elections of deputies to the Legislative Assembly; and 6 colons in elections of members of municipal councils.

303. In previous Presidential elections the "political debt" was regulated by the electoral laws then in force, which provided for payments as follows: 10 colons per vote in the first ballot for the Presidency and Vice-Presidency of the Republic; 6 colons in elections of deputies to the Legislative Assembly; and 4 colons in elections of members of municipal councils. Thus the political parties received the following amounts:

Presidential elections

Party	No. of votes	Amount received (colons)
ARENA	505,370	5,053,700
PDC	338,369	3,383,690
PCN	38,218	382,180
MAC	9,300	93,000
CONVERGENCIA	35,642	356,420
UP	4,609	46,090
AD	4,363	43,630
PAR	3,207	32,070
		9,390,780

304. In the most recent elections to take place in the country, during which deputies to the Legislative Assembly and the Central American Parliament and municipal councillors were elected, the results were as follows:

Party	No. of votes in legislative elections	Amount received (colons)
ARENA	466,091	3,728,728
PDC	294,029	2,352,232
PCN	94,531	756,248
CD	127,855	1,022,840
MAC	33,971	271,768
UDN	28,206	225,648
AD	6,798	54,384

Party	No. of votes in municipal elections	Amount received (colons)	Total receipts
ARENA	469,517	2,287,102	6,545,830
PDC	307,982	1,847,892	4,200,124
PCN	102,366	614,196	1,370,444
CD	94,697	568,182	1,591,022
MAC	36,095	216,570	488,338
UDN	22,954	137,724	363,372
AD	2,847	17,082	71,466

305. The electoral legislation governing the "political debt" has been amended; the amounts payable in respect of each valid vote have been increased to 8 colons per vote in elections to the Legislative Assembly and six in municipal council elections.

Brief chronological account of elections in El Salvador during the period 1982-91

1982 elections

306. In 1982, two years after the coup d'Etat of 15 October 1979 which overthrew the government of General Romero, elections were ordered to elect a Constituent Assembly. The preparations were begun in an atmosphere of uncertainty (increasing intensity of hostilities, falls in the principal economic and social indicators, etc.); the members of the Central Electoral Council (CCE) were appointed in March 1991.

307. The elections were held on 28 March. In all, 4,556 ballot boxes were provided; at times this caused congestion at the polling stations.

308. The following six parties competed for the votes of the Salvadorian people:

- Christian Democrat Party (PDC)
- Nationalist Republican Alliance (ARENA)
- Democratic Action Party (AD)
- National Conciliation Party (PCN)
- Popular Orientation Party (POP)
- Salvadorian People's Party (PPS).

309. Notwithstanding all the difficulties and disturbances caused by the FMLN, 1,660,393 persons voted. The results were as follows:

Party	No. of votes	Percentage	No. of deputies
PDC	590,644	40.2	24
ARENA	430,205	29.2	19
PCN	273,383	28.6	15
AD	112,787	7.7	2
PPS	44,900	3.0	1
POP	17,378	1.2	-

1984 elections

310. Two years elapsed following the elections for the Constituent Assembly. There was a provisional government led by Dr. Alvaro Magaña, part of the work of which was devoted to the attainment of agreements between the parties most hostile to one another. The FMLN, which at that time still believed in a military outcome to the hostilities, was naturally excluded. In this situation the preparations were begun for the calling of elections to the Presidency and Vice-Presidency of the Republic. Particular attention was focussed on the candidates of the PDC (José Napoleon Duarte) and of ARENA (Major Roberto d'Aubuisson), as the other parties did not present candidates of sufficient calibre to hope for victory.

311. The elections took place with the likelihood that no candidate would win on the first ballot and that a second ballot would therefore have to be envisaged. This did in fact happen. The first ballot took place on 20 March 1984; the level of participation by the Salvadorian people was good. Eight parties in all took part. The results of the voting were as follows:

Party	No. of votes	Percentage
PDC	549,727	43.3
ARENA	376,917	29.7
PCN	244,556	19.3
AD	43,939	3.5
PPS	24,395	1.9
PAISA	15,430	1.2
MERECEN	6,645	0.5
POP	4,677	0.4

312. The results of this electoral contest reveal that 1,400,000 voters went to the polls that day and that 1,266,286 valid votes were registered. The counting of votes did not start until 48 hours after the voting was completed, and the slowness of the proceedings gave rise to angry protests by the parties. After approximately a week's work the counting was considered completed. There being no outright winner, PDC and ARENA were admitted to participation in the second ballot.

313. The campaign was resumed following the declaration by the CCE that no candidate had obtained an absolute majority. The second ballot took place on 7 March 1984 and gave the following result:

Party	No. of votes	Percentage
Christian Democrat Party	752,625	53.6
Republican Nationalist Alliance	651,741	46.4
Total	1,404,366	100.0

It is worth recalling that the number of votes cast in the second ballot was higher than in the first. Thus José Napoleon Duarte was elected President of the Republic.

1985 elections

314. The Constitution of the Republic stipulates that the members of the Legislative Assembly and of municipal councils must be elected every three years. Consequently elections were called in 1985. The political scenario comprised the same elements of warfare and general social and economic crisis, but with one change: the government in power had proposed a dialogue with the Farabundo Martí National Liberation Front (FMLN) and proposed that it participate in a democratic system.

315. Nine parties took part in this electoral contest; some of them formed alliances in order to strengthen their positions. ARENA and PCN formed an alliance to contest jointly the elections to the legislature. The results were as follows:

Party	No. of votes	Percentage	No. of deputies
Christian Democrat Party (PDC)	556,282	52.7	33
Republican Nationalist Alliance (ARENA)	291,842	29.3	25
National Conciliation Party (PCN)	81,700	8.2	6
Authentic Institutionalist Party of El Salvador (PAISA)	37,733	3.7	1
Democratic Action Party (AD)	36,733	3.7	1
Salvadorian People's Party (PPS)	17,411	1.8	-
Renewal Action Party (PAR)	3,244	0.3	-
Popular Orientation Party (POP)	824	0.2	-
Stable Republican Centre Movement (MERECEN)	633	0.06	-

316. The results in the municipal elections were as follows:

Party	No. of votes	Percentage	No. of councils
PDC	517,635	52.7	153
ARENA	283,988	28.9	108
PCN	86,796	8.8	
PAISA	44,827	4.6	1
AD	31,908	3.3	-
PPS	16,542	1.7	-
MERECEN	614		
POP	456		

317. Broadly speaking, the elections took place in an atmosphere of uncertainty; there were transport stoppages; in some municipalities elections could not be held; etc. This made the task of bringing out voters in larger numbers rather more difficult.

1988 elections

318. The 1988 elections were the first to be conducted after the substitution of the elector's card for the personal identity certificate as the document giving entitlement to vote. The elector's card is the new personal identity document enabling citizens to exercise their voting rights. The new form of the electoral roll gave rise to a large-scale nation-wide registration process involving both the Central Electoral Council and the different political and social forces present within the country. The employees of the electoral services undertook the performance of the task of filling out and processing the cards and began the task of preparing a new autonomous and separate electoral roll to replace the one customarily used.

319. The elections took place on 20 March. On this occasion there were eight parties seeking to win a majority in the Legislative Assembly.

320. The results of the voting were as follows:

Party	No. of votes	Percentage	No. of deputies
ARENA	447,696	49.7	31
PDC	325,716	36.6	22
PCN	78,756	8.7	7
LIBERACION	34,960	3.9	-
PAISA	19,609	2.2	-
AD	16,211	1.8	-
PAR	-	0.5	-
POP	-	0.2	-

This result gave ARENA an absolute majority of seats in the Legislative Assembly.

321. In this election voters were given two voting papers, one bearing the names of the parties competing in the election of deputies and the other the names of the parties submitting candidates for municipal councils. Voting in the two elections took place simultaneously throughout the country.

322. The results of the voting in the municipal elections were as follows:

Party	No. of votes	Percentage	No. of councils
ARENA	389,453	46.5	177
PDC	298,551	35.6	79
PCN	82,057	9.8	4
LIBERACION	35,818	4.3	1
PAISA	17,138	2.1	-
AD	8,527	1.0	-

323. The electoral process was conducted in accordance with requirements. It can be said that, notwithstanding the problems caused by the introduction of the elector's card, the boycott by the FMLN and other factors, the election was a success.

The Electoral Code: recent changes

324. The Electoral Code currently in force dates from 1989. In 1991 some amendments were introduced for purposes of the elections held in that year. However, the changes made were small and did little more than provide a setting for the approaching elections.

325. The signature of the peace agreements between the Government of the Republic and the Farabundo Martí National Liberation Front brought in its wake, among other things, a reform of the electoral system which in its turn led to more radical reforms in the Electoral Code.

326. The first draft of the proposals for reform were drawn up and submitted to the Legislative Assembly by the former Central Electoral Council. It formed a basis for study by the Special Electoral Committee of the National Commission for the Consolidation of Peace (COPAZ). The latter, with the assistance of the representatives of all the political parties within it, was able to prepare a new draft Electoral Code, which was submitted to the Legislative Assembly in August of last year; the final decision of the latter is still pending.

327. The principal changes proposed in the electoral legislation are:

(a) The creation of a national register of natural persons;

(b) The internal reorganization of the Supreme Electoral Tribunal;

(c) The establishment of an electoral roll unit differing from the existing one with regard both to its functions and its autonomy vis-à-vis the Legislative Assembly;

(d) A considerable expansion of the Title concerning the supervision of political parties;

(e) Changes in the electoral calendar.

1989 elections

328. The new system was put to the test for the choice of the persons who were to govern the country during the period 1989-94. The election took place on 19 March. The results were as follows:

Party	No. of votes	Percentage
Republican Nationalist Alliance (ARENA)	505,370	53.82
Christian Democrat Party (PDC)	338,369	36.03
National Conciliation Party (PCN)	38,218	4.07
Authentic Christian Movement (MAC)	9,300	0.99

Party	No. of votes	Percentage
Convergencia Democrática (CD)	35,642	3.80
People's Union (UP)	4,609	0.49
Democratic Action Party (AD)	4,363	0.46
Renewal Action Party (PAR)	3,207	0.34
Total	939,078	100.00

The result was clear; the candidate of the ARENA party had won an outright victory with an absolute majority of the votes cast for the first time.

1991 elections

329. In 1991 elections took place for deputies and municipal councils. They were affected by a number of reforms, the most significant of which were:

(a) an increase in the number of members of the Legislative Assembly. Legislative Decree No. 670 made a considerable change in the composition of the Assembly, increasing the number of deputies from 60 to 84 and stipulating that 20 of them were to be elected in national constituencies and the remainder in departmental constituencies. This implied that the departments of San Salvador and La Libertad would have an additional three deputies each. But the most striking feature of this reform was the creation of a category of nationally elected deputies. This change in the electoral process meant that to win these seats the political parties could count all the votes cast for them in the entire country, even including votes cast in departments in which they had not had an opportunity to contest the election at the department level.

(b) The treaty establishing the Central American Parliament - a regional body for raising, analysing and making recommendations on political, economic, social and cultural matters of common interest - came into force, and elections to it were incorporated into the electoral system. The Central American Parliament sits continuously and consists of -

(i) 20 titular deputies (elected together with their respective alternates) from each member country;

(ii) the Presidents of each of the republics of Central America for the period of their respective terms of office;

(iii) the Vice-Presidents and Presidents-elect of each of the republics of Central America for the period of their respective terms of office.

330. Nine political parties took part in the 1991 elections (the People's Social Christian Movement, the Social Democrat Party and the National

330. Nine political parties took part in the 1991 elections (the People's Social Christian Movement, the Social Democrat Party and the National Revolutionary Movement formed an alliance to constitute Convergencia Democrática). The results were:

Party	No. of votes	Percentage	No. of deputies
ARENA	466,091	44.33	39
PDC	294,029	27.96	26
PCN	94,531	8.99	9
CONVERGENCIA	127,855	12.16	8
MAC	33,971	3.23	1
UDN	28,206	2.68	1
Democratic Action	6,798	0.65	-
Total	1,051,481	100.00	84

331. The seats in the Central American Parliament were allocated to the political parties on the basis of the votes they received in the "national" constituency as follows:

Party	No. of deputies
ARENA	9
PDC	6
PCN	2
CONVERGENCIA	1
MAC	2

332. The results in the municipal council elections were:

Party	No. of votes	Percentage	No. of councils
ARENA	469,517	45.30	175
PDC	307,982	29.71	71
PCN	102,366	9.88	14
CONVERGENCIA	94,697	9.14	1
MAC	36,095	3.48	1
UDN	22,954	2.21	-
AD	2,847	0.27	-
Total	1,036,458	100.00	262

333. There are two noteworthy features of these elections. Firstly, there was no boycott by the FMLN, even though fighting was still going on in some places; secondly, the numbers on the electoral roll had increased considerably.

Article 26

334. As regards the equality of all persons before the law, reference is made to the principles and provisions mentioned in the earlier report and those described in various places in the present report, deriving principally from article 3 of the Constitution, which was discussed earlier.

Article 27

335. There are so significant ethnic minorities in El Salvador. However, the State does protect the existing indigenous population with a view to preserving its identity and promoting and safeguarding its culture and customs. Article 62, paragraph 2, of the Constitution states that the indigenous languages spoken within the country form part of the national heritage and shall be preserved, disseminated and respected.

336. A National Commission for Culture and the Arts (CONCULTURA) has been established in El Salvador to ensure the promotion, dissemination and preservation of artistic expression in the country. One of its principal aims is to give effect to the provisions of article 62 of the Constitution.

337. The following indigenous associations have applied for and obtained recognition of their legal personality: the "Asociación Nacional Indígena Salvadoreña" and the "Movimiento Autóchtono Indígena Salvadoreño".

338. Article 3 of the Constitution, to which reference has been made a number of times in this report, stipulates that no restriction based on differences of nationality, race, sex or religion may be imposed with regard to the enjoyment of civil and political rights.

REFERENCES*

Constitution of the Republic (as amended)

Act concerning the Office of the Public Counsel General for the Defence of Human Rights

Act concerning the National Council of the Judiciary

Act concerning Careers in the Judiciary

Executive Decree No. 7 to establish a Presidential Commission for Human Rights

Act concerning the Names of Natural Persons

Emergency Act to Deal with the Problem of Unconvicted Detainees

List of civilians injured by explosive devices or victims of the armed conflict in El Salvador during the period January 1986 - May 1992

Table showing number of courts in the judiciary

Act to Create a Commission of Inquiry into Criminal Acts

Act concerning the National Commission for the Consolidation of Peace

Results of the Economic and Social Development Plan Achieved after Four Years of Government.

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* These documents are available for consultation in the archives of the Centre for Human Rights.